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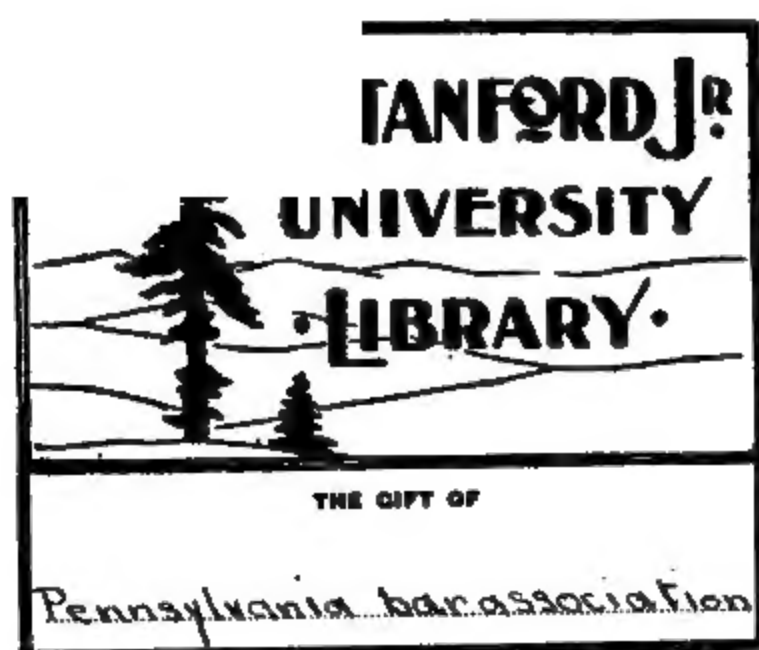
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# REPORT

OF THE

## Second Annual Meeting

OF THE

# Pennsylvania Bar Association

HELD AT

BEDFORD SPRINGS, PA.

July 8 and 9, 1896

PHILADELPHIA, PA.

PRINTED FOR THE PENNSYLVANIA BAR ASSOCIATION

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**SAMUEL DICKSON**



Second Annual Meeting

## Pennsylvania Bar Association

Philadelphia, December 10, 1905

The Second Annual Meeting of the Pennsylvania Bar Association was held at 10:00 A. M. at the Assembly Room of the Bedford Springs Hotel. Dickson, Esq., President, in the Chair. The Session with an Address on

### THE DEVELOPMENT IN PENNSYLVANIA OF CONSTITUTIONAL RESTRAINTS UPON THE POWER AND PROCEDURE OF THE LEGISLATURE

*Given by the Pennsylvania Bar Association.*

The duty of the President to deliver an address "with particular reference to any statutory changes in the State of public interest, and any proposed changes suggested by judicial decisions during the year." The laws enacted at the session of 1905 do not call for any minute or elaborate discussion, and what is to be said upon the topic specially assigned can be said incidentally. I propose, therefore, to trace the development in Pennsylvania of constitutional restraints upon the power and procedure of the Legislature.

Of late years, the condition of things in most European countries, and especially in France and in England, has attracted unusual attention to questions relating to the theory and art of government. The republican government of France is in a state of unstable equilibrium, and the Senate is to be vainly striving to retain the share of power given by the Constitution; and in the last general election

W. D. GON

# Second Annual Meeting

OF THE

## Pennsylvania Bar Association

BEDFORD SPRINGS, Pa., *July 8, 1896.*

The Second Annual Meeting of the Pennsylvania Bar Association was called to order at 10.30 o'clock A. M., in the Assembly Room of the Bedford Springs Hotel, Samuel Dickson, Esq., *President*, in the Chair, who opened the Sessions with an Address on

### THE DEVELOPMENT IN PENNSYLVANIA OF CONSTITUTIONAL RESTRAINTS UPON THE POWER AND PROCEDURE OF THE LEGISLATURE

*Gentlemen of the Pennsylvania Bar Association:*

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in England, the House of Lords, which has always given way before the Commons when it was certain that the latter truly represented the wishes of the people, was threatened with annihilation for having refused its assent to a bill passed by the lower house, although the result of the general election which followed showed that the bill did not command popular approval.

Throughout Europe, with the exception of Russia, the tendency towards democracy seems to be steadily growing. The question which disturbs all thoughtful men is how the coming government of the people is to be regulated and controlled. The illusions, which swayed men's minds in 1790, when :

As if waked from sleep, the Nations hailed  
Their great expectancy ;

and even the sanguine hopes, which inspired them in 1848, have died away, and the problems of government are dealt with rather in the prosaic fashion of a previous century, when it was said :

For forms of government let fools contest ;  
Whate'er is best administer'd is best.

It is in this temper that Bagehot, who in his political, as well as in his economic, writings was in the habit of looking at things rather than words, has discussed the English Constitution. No more curious contrast between two accounts of the same system can be found than between the vague generalities and platitudes of Blackstone and Bagehot's description of the way in which the English Government has come to be a government by a committee of the House of Commons, called a Cabinet, and of the manner in which laws are, in fact, made, and the work of administering the government actually carried on by this legislative committee. His little volume, however, is devoted to things as they were when he wrote, but the facts with which the English people have now to deal are that having virtually universal suffrage, they have no effective second chamber, no independent executive, no written constitution, and no court to annul

unconstitutional laws. Confronted with this condition, they have recently been studying the results of the experiment in popular government, which the people of the United States have been making, in a very different spirit from that in which they once criticised our institutions.

Writing in 1862, the historian Freeman says :

At all events the American Union has actually secured, for what is really a long period of time, a greater amount of peace and freedom than was ever before enjoyed by so large a portion of the earth's surface. There have been, and still are, vaster despotic empires, but never before has so large an inhabited territory remained for more than seventy years in the enjoyment at once of internal freedom and exemption from the scourge of internal war.

"History of Federal Government," Vol. I, page 112.

So, too, in his "Essays on Popular Government," which were published in 1885, Sir Henry Sumner Maine said :

On the whole, there is only one country in which the question of the safest and most workable form of democratic government has been adequately discussed, and the results of discussion tested by experiment. This is the United States of America. American experience has, I think, shown that, by wise constitutional provisions thoroughly thought out beforehand, democracy may be made tolerable. The public powers are carefully defined ; the mode in which they are to be exercised is fixed ; and the amplest securities are taken that none of the more important constitutional arrangements shall be altered without every guarantee of caution and every opportunity for deliberation.

The experiment is not conclusive, for the Americans, settled in a country of boundless, unexhausted wealth, have never been tempted to engage in socialistic legislation ; but, as far as it has gone, a large measure of success cannot be denied to it, success which has all but dispelled the old ill-fame of democracy.

"Popular Government," page 110.

The Federal Constitution has survived the mockery of itself in France and in Spanish America. Its success has been so great and striking, that men have almost forgotten it, that if the whole of the known experiments of mankind in government be looked at together, there has been no form of government so unsuccessful as the republican.

*Ibid.*, page 202.

The favorable judgment of these high authorities has been more than confirmed by Mr. Bryce, in his "American Commonwealth," and even Mr. Lecky, who augurs so unfavorably for the liberty and security of the citizen when democracy shall have established itself throughout Europe, points to the exceptionable conditions under which the experiment of democratic government has been tried in the United States, as accidents which render the result of the trial an unsafe precedent for other countries. ("Democracy and Liberty," pages 67-68.)

In view of some recent developments, and of tendencies which are becoming more and more apparent, it is probable that some of the commendation, as well as some of the censure, bestowed by these foreign critics should be seriously qualified. It is certain that the Senate of the United States has never been held in such low esteem as at the present time, and the adjournment of Congress is welcomed as a cause of public congratulation. A few weeks ago the prevalent view was accurately expressed by a leading journal, which declared that "At no time, in the lifetime of the present generation, has the public opinion of the National Legislature been so contemptuous, and so deservedly contemptuous." The methods of lawmaking in use in Washington are beyond question as bad as can be devised, and with the growth of population and wealth, and the resulting growth in the demands for future legislation, the dangers of corrupt, hasty and imperfect legislation must steadily increase. Whether it will be possible to limit the subjects of legislation by Congress, and to insure a more intelligent and thorough consideration of the bills which are passed, are questions which can only be satisfactorily answered by those who have had experience in the practical work of framing and passing laws in the House and Senate; but some light will be thrown upon the subject by the history of what has been done, in this State, for the protection of the people and their property against their representatives in whom is vested the legislative power of the Commonwealth.

It is to a brief sketch of the history of the methods adopted for this purpose, in the constitutions and constitutional amendments of Pennsylvania, that I now invite your attention.

In pursuance of a resolution of the Continental Congress, adopted May 15, 1776, recommending assemblies and conventions of the United Colonies—

Where no government sufficient to the exigencies of their affairs had been established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular and America in general,

the Provincial Conference Committee of the Province of Pennsylvania met at Carpenters' Hall, in Philadelphia, June 18, 1776. Upon the following day it was unanimously resolved to call a Provincial Convention—

For the express purpose of forming a new government in this Province, on the authority of the people only.

After prescribing the qualifications of members and providing for the method of holding the election (and, upon the 24th of June, declaring their willingness to concur in the vote of Congress declaring the United Colonies free and independent States, provided the forming of the government and the regulation of the internal police of this colony be always reserved to the people of the said colony) the Conference upon the 25th of June dissolved itself.<sup>1</sup>

The Convention met on the 15th of July, and upon the 28th of September adopted the Constitution of 1776. It appears from the brief minutes which have been preserved that the declaration of rights received a large share of attention, and, after a long preamble, this declaration constituted the first chapter or article of the Constitution. In accordance with the views of Dr. Franklin, the President of the Convention, the supreme legislative power was vested in a single body, styled the House of Representatives, with express authority to—

<sup>1</sup>Proceedings relative to calling the Conventions of 1776 and 1790, etc., Hbg., 1825.



Redress grievances, impeach State criminals, grant charters of incorporation, constitute towns, boroughs, cities, and counties, and all other powers necessary for the legislature of a free State or Commonwealth :

Subject to the condition that—

The members shall have no power to add to, alter, abolish, or infringe any part of this Constitution.

The only provisions relating to the form or mode of procedure were a requirement that the votes and proceedings should be printed weekly, with the yeas and nays when required by two members, and that all bills of a public nature should be printed for the consideration of the people before final reading, and, except on occasions of sudden necessity, should not be passed into laws until the next session of the Assembly. A Supreme Executive Council of twelve persons was created, and the President and Vice-President were to be chosen annually by the joint ballot of the General Assembly and Council. The final section provided for a Council of Censors to be elected in 1783 and in every seven years thereafter, whose duty it should be to inquire whether the Constitution has been preserved inviolate, and the executive and legislative branches of the Government had assumed or exercised greater powers than they were entitled to under the Constitution, with power to call a convention and propose amendments.

The real control of all departments of the Government was thus really centred in the Legislature, and by the time the Council of Censors met in 1783, its many usurpations, both of executive and judicial power, had caused great discontent, and protracted and earnest discussion took place as to the necessity of calling a convention to revise the Constitution. It was pointed out, in a report submitted in August, 1784, that the peculiar circumstances of Pennsylvania, under the proprietary government, had naturally led to such usurpations. The enormous influence of the Proprietor having an interest adverse to that of the people, had prompted their representatives anxiously to embrace any opportunity to get

the public revenues into their disposition, and thus the same body which levied the money from the subject also expended it, in some instances by their resolves, without control or accountability. In like manner, the unwillingness to give the proprietary government the increased power, which would have been derived from the creation of a court of chancery, had led to the retaining of the exercise of equitable power by the Assembly. These precedents, it was declared, had been too often recurred to, since the Revolution.

Many instances enumerated in the report were of a very flagrant character. As, for example, a law was passed to vest in one claimant real estate in the possession of another, after it had been shown that an action in ejectment was pending in the Court of Common Pleas of Philadelphia County, and it was objected that in view of the constitutional right to a trial by jury, the right to "redress grievances" did not extend to such cases unless the word "grievances" had changed its import. To this it was replied that :

It was of no importance what the word "grievances" meant or means in England or elsewhere. It was very well understood here, and here as well as in other countries there may happen cases of oppressive proceedings of executive power and of the courts of justice, and when they do happen we trust the Legislature will interfere and afford redress.

Numerously signed remonstrances against a convention having been received, the Council adopted an address stating that they had determined not to call one, and adjourned with an earnest appeal to the people to give the Constitution a fair and honest trial for seven years more.

The adoption of the Federal Constitution, in 1787, naturally strengthened the movement for the amendment of that of Pennsylvania, and in March, 1789, the Legislature adopted a preamble, reciting the language of the Declaration of Independence in reference to the right of the people to alter or abolish the form of government, and of the Pennsylvania Bill of Rights to the same effect, as proving that they could not be limited to the method of amendment provided by the

Constitution of 1776, and, therefore, resolved to submit to the people whether it was necessary to call a convention for the purpose of revising, altering and amending the Constitution. No popular vote was actually taken upon the question, but in the following September it was reported that the members had reached a full and thorough conviction that the views of the great majority of the people called for the measure, and thereupon it was determined to call a convention to meet upon the 24th of the following November.

On the 2d of December, upon motion of James Wilson, the Committee of the Whole resolved, as the opinion of the Convention, that :

The Legislature of this State should consist of more than one branch ;

and upon the 3d of December, upon motion of William Lewis, this resolution was amended so as to read :

That in the opinion of this committee, the legislative department of the Constitution of this Commonwealth requires alterations and amendments so as to consist of more than one branch, and in such of the arrangements as may be necessary for the complete organization thereof.

Upon the 7th of December, upon motion of Mr. Wilson, the following resolution was adopted :

*Resolved*, That in the opinion of this committee the Constitution of this Commonwealth shall be so amended as that the supreme executive department shall have a qualified negative on the legislative.

These resolutions were adopted by the Convention upon the 9th and 10th of December. The draft of the legislative articles, submitted on the 21st of the same month, corresponded substantially with the final revision in the Constitution, as adopted on the 2d of September, 1790.

The general frame of the Constitution was, of course, modeled after that of the Federal Constitution. Neither instrument evinces any great jealousy of the power of the legislature. Except the clause as to the writ of *habeas corpus* and bills of attainder, the restrictions upon the power of Con-

gress were intended to prevent discrimination against a section or a State rather than encroachments upon the rights of individuals, and as the new agent, constituted to act for the common convenience and the common welfare, was to act under a letter of attorney containing carefully specified and enumerated powers, it was not even thought necessary or proper by the Convention to add any distinct reservation of the powers not expressly granted, nor any enumeration of rights regarded as unalienable and indefeasible. This was doubtless the logical view of the subject, but the objections to the new government would probably have prevailed, if it had not come to be understood that the first Congress would submit amendments which would constitute a substantial bill of rights. These amendments were ratified by the Legislature of Pennsylvania upon the 10th of March, 1790, while the Constitutional Convention was in session, and upon the 2d of September, 1790, the Convention ratified the new Constitution under which the people of Pennsylvania were to live for nearly a century.

Among the members of the Convention were Thomas McKean, who had drawn the constitution of 1776 for the State of Delaware, in a single night;<sup>1</sup> James Wilson, who had taken so prominent a part in the Federal Convention of 1787; William Lewis, a lawyer whose fame still survives; Albert Gallatin, one of the two great Pennsylvanians born outside the State; Thomas Mifflin, and others whose names are still well remembered. Gallatin afterwards said that this Convention was one of the ablest bodies of which he was ever a member and with which he was acquainted, and except Madison and Marshall, that it embraced as much talent and knowledge as any Congress from 1795 to 1812.<sup>2</sup> They were peculiarly fitted, therefore, to frame a constitution

<sup>1</sup> "Two days after I went to Newcastle to join the Convention for forming a constitution for the future government of the State of Delaware (having been elected a member for Newcastle County), which I wrote in a tavern, without a book or any assistance." Letter to Governor Rodney, August 22d, 1813. *Life of Thomas McKean*, by Roberdeau Buchanan, page 51.

It was, however, a close copy of the Pennsylvania Constitution.

<sup>2</sup> "It was less affected by party feelings than any other public body that I have known." Gallatin's Writings, Vol. II, page 583.

for the Commonwealth, and having adopted a bill of rights in which they specifically curtailed the power of the Legislature by prohibiting laws *ex post facto* and impairing contracts—laws restraining the right of any person, who should undertake to examine the proceedings of the Legislature or any branch of the government, to the use of the printing press, as well as acts of attainder, and the grant of letters of nobility—they, too, thought it unnecessary to do more than to divide the legislative power between a Senate, elected for four years, and a House of Representatives, elected annually, and to give the executive, elected by the popular vote and having a term of three years, a qualified negative on legislation. The requirements as to the keeping of journals and entering the yeas and nays, and originating bills of revenue in the lower House, and the limitation of the power of adjournment, were important as far as they went, but they did not go far.

Considering that the legislative powers vested in Congress by the Federal Constitution were only those therein granted, the failure to provide explicit limitations is easily intelligible; but in view of the record made by the Legislature of Pennsylvania under the Constitution of 1776, in the way of encroachments upon the judicial and executive powers of the government, further restrictions upon its mode of procedure or powers might naturally have been suggested; but while the jealousy of the executive and judiciary inherited from the contest with the proprietary government, to which the Committee of the Council of Censors had referred in 1784, still survived, and there was reason to apprehend that the authority confided to the Governor (who was, after all, a substitute for a king) might be abused, the feeling was that the members of the Legislature would be the representatives of the people, and full deliberation and delay having been insured by the establishment of two branches, and by conferring a qualified negative upon the Governor, in them the people could securely put their trust. The possibility of fraud in the methods of legislative procedure or of corruption upon the part of the

members of the Legislature does not appear to have been considered, and no precautions were taken.

As Chief Justice Marshall said in *McCulloch vs. State of Maryland*, 4 Wheaton, 428 :

The people of a State, therefore, give to their government a right of taxing themselves and their property, and as the exigencies of government cannot be limited, they prescribe no limit to the exercise of this right, resting confidently on the interest of the legislator, and on the influence of the constituents over their representative to guard them against its abuse.

For many years the result justified their confidence. The sufficiency of the safeguards established by the Federal Constitution and by that of 1790 was tested by the experience of nearly a century, and during all that time no civil or political right of the citizen was infringed without the possibility of successful application to the courts of the State or of the United States for redress ; and by the common consent of those living under it the Constitution of 1790 gave the people of Pennsylvania the opportunity to provide themselves with a good and efficient government. When it was proposed, nearly half a century after its adoption, to call a convention to revise it, the Governor of the State called it a "matchless instrument," and when the Convention assembled in 1838 the members alluded to it with as much veneration as is now used in speaking of the Federal Constitution. In the course of the debates one of the members asserted :

So far had some gentlemen been carried away by their reverence for the Constitution as it now was that they attributed all the present disasters in the world to the attempt that was made to reform the Constitution of Pennsylvania. He had heard it said that the Constitution was made by the most enlightened men of any age ; that inasmuch as it was a constitution under which men had lived happily and prosperously, that therefore one ought not to want to alter it.

And another asserted :

That under no constitution that had ever existed had life, personal liberty, and property been more fully guaranteed than under the Constitution of Pennsylvania.

"Debates Const. Conv.," Vol. XI, 123.

The general legislation of the State down to that time had been in the main judicious, and some of it was of exceptional excellence. The Senate and the House of Representatives always included among their members the leading men of the State and almost every lawyer of prominence—many of them afterwards members of the Supreme Court, and at least two of them, Thompson and Sharswood, succeeding to the Chief Justiceship—served his term at Harrisburg.

The most important and valuable body of statute law ever enacted in this State was that prepared by the Commissioners appointed under a resolution of March 23, 1830 :

To revise, collate, and digest all such public acts and statutes of the civil code of this State, and all such British statutes in force in this State as are general and permanent in their nature.

The three Commissioners, William Rawle, Thomas I. Wharton and Joel Jones, were lawyers of ripe learning and indefatigable industry. Their reports are scarcely less valuable than the Acts which they drafted. They undertook to examine the whole body of British statutes down to the Revolution, and to separately examine and study all of the Acts, more than six thousand six hundred in number, which had been adopted since 1700, for the purpose of ascertaining whether they were private or public, local or general, temporary or permanent, repealed, altered, or in force. It is impossible to read the record of the manner in which they discharged their arduous and responsible duties without the highest appreciation of their services. In the fourth report they thus describe the manner in which their work had been done :

The mode which has been adopted by the Commissioners to effect that cautious and thorough revision of the law which the Legislature seems to have contemplated is that each Commissioner separately studies and prepares the bills which the allotment requires of him ; his draught, with explanatory notes and references, is handed to and separately and carefully considered by his colleagues, and returned to him for his further consideration. A joint conference then takes place ; every section, every line, is canvassed, retained,



altered, or expunged, according to the result of united deliberation. Two fair copies are subsequently made, both of the bill and of the explanatory remarks, which copies, before they are transmitted, are carefully examined and corrected. Less pains than these would be inconsistent with our trust, and could produce no result satisfactory to the Legislature.

Of the twenty-nine statutes which they prepared, twenty-five were adopted and are substantially still in force, and it cannot be doubted that, like the criminal code and code of criminal procedure of 1860, they furnish the precedent to be followed in the revision of the laws of the Commonwealth.

It was, in fact, followed in the appointment of a commission, under the Act of May 5, 1876, to devise a plan or plans for the government of cities of this Commonwealth, and the report then submitted resulted in the enactment of the Charter of the City of Philadelphia, known as the Bullitt Bill, which has at least made efficient government possible in that city—although until some change be made in the methods of legislation good government need not be hoped for.

Of the penal code, which is understood to have been largely the production of Judge Edward King, it may be permitted to mention that at the celebration of the eighth centennial of the University of Bologna, in 1888, I was much surprised to be asked by the late Dr. von Holtzendorff, the head of the great Law School of Munich: "What is the date of your penal code, 1860 or 1861?" His knowledge extended beyond the date, and in the course of his remarks he went on to say that it was regarded, in Germany, as the most perfect code of criminal law in existence.

Unfortunately, all the laws passed prior to the Convention of 1838 were not so wise as those enacted upon the recommendation of the Commissioners, and the people of Pennsylvania were to learn that, while they had environed themselves with all the guarantees from Magna Charta down, which had been invented to secure them against any invasion of their rights except according to due process of law, they

had given to the Legislature the power to impoverish them, and to place a perpetual mortgage upon their property and their earnings, for, in the language of Chief Justice Marshall, in giving a power to tax they had given a power to destroy.

In pursuance of a plan of internal improvements, which received almost unanimous approval, the Legislature of Pennsylvania authorized the expending of millions of dollars of borrowed money in the construction of public works. The indebtedness thus incurred forced the Commonwealth to default and brought a stain upon its good name not yet altogether effaced, and placed an enduring burden of taxation upon its industries which is still grievous to be borne. The importance of this legislation will excuse a brief summary of the facts.

The late Judge Sharswood used to begin his lectures on corporations with the remark, "Pennsylvania is the paradise of corporations." From 1776 to 1837 eleven hundred and forty-two corporations were chartered, with an authorized capital of over \$150,000,000. Excepting banks and banking institutions, they were chiefly *quasi* public corporations, such as turnpike, bridge, canal, and railroad companies. William Penn himself had suggested the practicability of constructing a waterway between the Schuylkill and the Susquehanna, and in 1762 David Rittenhouse and Dr. William Smith, the Provost of the University of Pennsylvania, had surveyed a route for a canal to connect the two rivers, and the preliminary survey of the Chesapeake and Delaware Canal was ordered in 1774 by the American Philosophical Society. Between 1792 and 1828 one hundred and sixty-eight turnpike companies were incorporated, of which one hundred and two went into operation and constructed nearly two thousand three hundred and fifty miles of road, at a cost of over \$8,000,000. From 1791 to 1828 over \$22,000,000 were expended in the construction of canals, railroads, turnpikes, and bridges, and between 1803 and 1822 the State subscribed for stocks in fifty-six turnpike companies, twelve

bridges, and three canal and lock navigation companies, for an amount of nearly \$2,500,000.<sup>1</sup>

By an Act of the 27th of March, 1824, the Legislature appointed Commissioners for the purpose of promoting the internal improvement of the State, who reported that by the expenditure of \$27,500 a year for five years, the State could secure the completion of a canal from Pittsburgh to Philadelphia, which, in twenty-two years, would put the State in possession of a clear annual revenue of \$300,000.<sup>2</sup>

The following year Canal Commissioners were appointed, and the construction of canals, bridges and turnpikes undertaken in all parts of the State.

It is easy to be wise after the event, and every one can now see that it was imprudent to undertake the construction of works of such magnitude in so short a time, and that the money should not have been provided exclusively by borrowing; but the State had not needed to raise revenue by taxation, and it was universally believed that the net income from the improvements under construction would more than pay the interest upon the cost. The fictitious prosperity, which resulted from the large expenditures made, was further aggravated by the distribution of the surplus revenue from the public lands under the Act of Congress of June 23, 1836, and the general mania for speculation which took possession of the entire people of the United States. It was from no exceptional lack of foresight, peculiar to Pennsylvania only, that the State became involved as it did, nor was it, in fact, any good ground of censure that when the panic of 1837, which destroyed commercial credit throughout the country, had fully developed, there should have been a temporary default in the payment of interest on the State debt. In no State was the calamity so overwhelming and so complete as in Pennsylvania, not only because of the larger expenditures of capital by the State and by individuals in enterprises

<sup>1</sup> Historical Sketch of the Finances of Pennsylvania—Publications of the American Economic Association, Vol. II, page 20.

<sup>2</sup> Laws of Pennsylvania, Vol. VIII, page 254, *note*.

which were, for the time, absolutely unproductive, but because the failure of the Bank of the United States affected Philadelphia more severely than any other community. That bank having failed for the second time in 1839, and it having become obvious that no further loans could be negotiated, Governor Porter, in his message of 1840, pressed upon the Legislature the necessity of taxation, saying :

It must be obvious to every citizen of the Commonwealth that his house, his farm and his property are all pledged beyond the possibility of release to the ultimate payment of the State debt, and the interest thereon accruing, agreeably to the stipulation of the loan holders. \* \* \* The private individual would tax his industry and his property to the utmost to pay off a debt and the interest upon it that was consuming the avails of his industry and his substance. So also, it seems to me, should the representatives of a wise and judicious people.

It is not to be wondered at that the taxing Acts first passed proved inadequate, or that the people, overwhelmed with their disasters, should have been slow to respond ; and when it was found impossible to meet the interest falling due August 1, 1842, interest-bearing certificates were issued, and in April, 1843, in order to raise funds, the Legislature authorized the sale of all shares of stock held by the State in any incorporated company. At the prices that could then be obtained the loss was enormous, but it was bravely faced, and by the Act of April 29, 1844, a system of taxation, as searching and severe as any ever adopted by the representatives of a free people, was put in force. The stoppage of business and the disappearance of values, which followed the panic of 1837, swept away private fortunes and reduced thousands, who had been prosperous and affluent, to penury, and for several years destroyed the earning power of every industry ; but, under the pressure of a visitation, as destructive as the Irish famine or a war of invasion, the people of Pennsylvania, without a hint of repudiation adjusted themselves to the load which their representatives had placed upon them, and, by the end of 1845, the credit of the State was restored.

If the full truth had always been known, the manner in which they faced adversity would have been regarded as greatly to their credit; but until the publication of the "Historical Sketch of the Finances of Pennsylvania" of Mr. T. K. Worthington in 1887 (Publications of the American Economic Association, Vol. II, No. 2), the facts could only be found in official reports and in the pamphlet laws and notes added to the edition of the "Laws of Pennsylvania," published by Kay & Bros.

It is not likely, however, that there would have been so general a misapprehension upon the subject, had it not so happened that Sydney Smith had made a small investment in the State loan, which he described in his letter to Congress<sup>1</sup> as "a saving from a life income, made with difficulty and privation." Considering that he had just inherited from his brother a large fortune, which, as he said in a letter to Mr. Murray, referring to his letter to Congress, had made him a rich man,<sup>2</sup> his allusion to his privations was not quite ingenuous, and as he was a singularly just and fair man, if he had been acquainted with the facts, he would doubtless have made allowance for a temporary hesitation to adopt the measures necessary to meet such an emergency; but at all events he had reason for his criticism, as his interest was undoubtedly for a time delayed, and his jokes were so good that not only may their unfairness<sup>3</sup> be overlooked but the service rendered by him may be now gratefully recognized. His ridicule, as Governor Porter was in the habit of saying, was more potent than solid argument, and helped greatly to secure the passage of the onerous tax law of 1844.

<sup>1</sup> McCulloch's Dictionary of Commerce, page 628.

<sup>2</sup> I am become rich. My youngest brother died suddenly, leaving behind him £100,000, and no will. A third of this, therefore, fell to my share, and puts me at my ease for my few remaining years. After buying into the Consols and the Reduced, I read Seneca on the "Contempt of Wealth." What intolerable nonsense! \* \* \* Did you read my American petition, and did you approve of it?

Letter to John Murray, June 4, 1843. Life and Letters of Sydney Smith, Vol. II, page 489.

<sup>3</sup> The State of Pennsylvania cheats me this year out of £50. There is nothing in the crimes of kings worse than the villainy of democracy. The mob positively refuse all taxation for the payment of State debts!

Letter to Lady Grey, September 19, 1842, Vol. II, page 475.

A Harvard law professor, however, who has undertaken to deal with the subject, has no such excuse for his blunders. In his essay upon "Restraints on the Alienation of Property," Professor Gray offers this fantastic explanation of the doctrine of spendthrift trusts :

Among the causes which have produced the frame of mind in which the doctrine of spendthrift trusts has found a congenial home there must be placed the attempts to avoid payment of the money borrowed by the Nation, or by States or municipalities, either through repudiation, or through technical objections, or through debasement of the coin or currency, which have at times been too successful, and which have exercised so great an influence on political parties. Such things cannot be without a weakening of the moral sense of the feeling of imperative duty to use all the money that a man can control for the payment of his debts.

It is worth observing that the Pennsylvania courts were inaugurating the doctrine of spendthrift trusts at the time when the epidemic of repudiation which Sydney Smith has immortalized was for the time discrediting that Commonwealth.

Now the decision in *Fisher vs. Taylor*, 2 Rawle, 33, was made in 1829, and there was no default in the payment of interest until 1842, and the State's continued to sell at a premium for nearly ten years after the decision in *Fisher vs. Taylor*, and sold at par as late as 1839 ("Historical Sketch," etc., page 70). According to Professor Gray, however, the Supreme Court of Massachusetts had not the excuse which tended to exculpate the Supreme Courts of the United States and of Pennsylvania. After offering his explanation of the Pennsylvania doctrine, he goes on :

An effect, and at the same time a cause, of the state of mind which favors spendthrift trusts appears in the statutes by which large amounts of property are exempted from execution. Judge Miller, with his accustomed acuteness, has observed this. In several of the States property, real and personal, to the amount of thousands of dollars, is exempt, and the exemption laws are gloried in as calculated "to cherish and support in the bosoms of individuals those feelings of sublime independence which are so essential to the maintenance of free institutions." A community which has accustomed itself to look with complacency on a man holding ten or twelve thou-

sand dollars worth of his own property, and leaving his debts unpaid, is not likely to be troubled by a man's having a life interest under a trust which his creditors cannot reach.

These have been powerful factors in the introduction of spend-thrift trusts, but they do not account for everything. Take, for instance, the case of *Broadway Bank vs. Adams*, in Massachusetts. The repudiation of National, or State, or personal obligations has never, since Shay's rebellion, found favor in that State, and the exemption laws are moderate and reasonable.

It may be thought that this last remark does not evince much familiarity with the history of Massachusetts during the war of 1812, but the story of a late controversy, now mostly buried in the law reports, and in the reports of legislative committees of Massachusetts, may serve to indicate that the standard of integrity in Boston is not much higher than that of Harrisburg, and, though somewhat irrelevant, it may be worth the telling.

Prior to 1862 the State of Massachusetts had agreed to lend \$2,000,000 to the Troy and Greenfield Railroad Company, to aid in the construction of the Hoosac Tunnel, but as the management was unsatisfactory an Act was passed under date of April 25th, 1862, entitled "An Act to provide for the more speedy completion of the Troy and Greenfield Railroad and Hoosac Tunnel," by the second section of which the railroad company was authorized to surrender to the State the property then mortgaged upon this condition: "But the right of redemption shall not be barred until ten years have elapsed after the said road and tunnel are completed and the same opened for use." It is needless here to say that the phrase "right of redemption" is a technical one, and *ex vi termini* involves the right of a judicial procedure. By the Act of 1804, the Legislature of Massachusetts had passed an Act authorizing any mortgagor, who had mortgaged property to the Commonwealth, to file a bill in equity for the redemption thereof in the Supreme Judicial Court; and it was indisputable that it was believed by the representatives of the State of Massachusetts, including its then Attorney-General, as well as by those of the company,



that this Act gave to the company the right to maintain a bill to redeem in case of controversy. After the tunnel was opened, the company offered payment, but the State Treasurer declined to state an account and thereupon a bill was filed for an account and to redeem, to which the Attorney-General interposed a demurrer. After argument, the demurrer was sustained and the bill dismissed. The opinion of the Court, reported in 127 Mass., 43, contains a full and elaborate discussion of the questions involved, and must be accepted as a correct exposition of the law of the State. The company then found it necessary to apply to the Legislature for an Act giving the Court the jurisdiction to hear and determine the case, which both parties believed it to possess, when the bargain was made. Such an application was presented at several successive sessions of the Legislature, and upon one occasion counsel amused himself by alluding, with as much particularity as was consistent with politeness, to the letter of Mr. Ticknor to the *Boston Advertiser*, a copy of which was sent by Mr. Everett to Sydney Smith, and which is printed in his "Life and Letters," Vol. I, page 350. In the course of that letter Mr. Ticknor observes :

The claims of a creditor are not always welcome to his debtor, and, when other means have failed, they are not always set forth by the injured party in the most civil and gracious words ; writs and executions, for instance, are not drawn up in terms chosen for the sake of pleasing "ears polite." Mr. Smith would, no doubt, have much preferred to use the good set terms of these instruments of established authority ; and nobody would then have fancied he was doing anything unreasonable, since he would be doing just what everybody else does who cannot in other ways get his rights. But the great and rich State of Pennsylvania, like other States of our Union, has taken some pains to place herself above the reach of such vulgar processes for coercing her to be honest. She *cannot* be sued ; her creditor, therefore, is compelled to use his own words instead of the more stringent words of the law.

Following a precedent, in the way of self-gratulation, set more than eighteen centuries ago, Mr. Ticknor adds :

The people of Massachusetts and New England, and indeed, the people of the majority of these States, are not called upon to

take to themselves any more of the censures of Mr. Smith than a man is obliged to take of the censures that fall on a disgraced community with which he is intimately associated. We may, therefore, well be thankful, and in some degree proud, that these States have committed no injustice towards their creditors; but while we are thankful for this we must also be careful not to countenance the dishonest States in their dishonesty, nor to seem eager to rebuke a foreign creditor who comes among us boldly demanding his dues.

The application would seem to have been reasonably easy, but the Legislature of Massachusetts could never be induced to confer upon their Supreme Court, in that case, the power which their State officials had asserted it possessed, and which it already had in other like cases, and to permit their own Supreme Court to decide the questions involved; and the company was obliged finally to accept a small amount named by the committee of the Legislature. The result was that in that case, at least, which is hardly yet barred by the Statute of Limitations, the State of Massachusetts was guilty not merely of repudiation, but of confiscation, and the appropriation of other people's property to its own use and emolument. In view of that record, it is not the part of wisdom for any Harvard professor to institute comparisons between his own State and the State of Pennsylvania.

To return from this digression, it is worthy of note that, notwithstanding the fact that the results of the mistaken policy of attempting to construct internal improvements, beyond the ability of the State to pay for them, were becoming apparent in 1838, when the Convention met to revise the Constitution, the only additional restrictions placed upon the Legislature were those relating to the chartering of banks of discount, the making and securing of compensation before private property was taken for public use, and the granting of legislative divorces. The subjects which aroused interest were the insertion of the word "white" in the suffrage qualification, the power of appointment by the Governor, and the substitution for the life tenure of the judges of the Supreme Court of a term of ten years, and of ten years for the judges of Common Pleas.

Neither the Constitution of 1776 nor that of 1790 had been adopted by popular vote, and the amendments of 1838 were only carried by a majority of a little over twelve hundred. The lesson taught by the history of the State improvements, however, had been effectually learned, and no further attempt was made to involve the State in the construction of public works. On the contrary, the results of the operation of those already built were so unsatisfactory that in 1857-8 the railroads and remaining canals, which had cost the State over \$60,000,000 were sold for \$11,000,000. But in different sections of the State its municipalities were anxious to promote the building of railroads, and the right to do so, when authorized by the Legislature, was finally established in 1853, by the Supreme Court in the case of *Sharpless vs. The Mayor of Philadelphia*, 9 Harris, 147, in which Chief Justice Black delivered one of his ablest opinions. The full mischiefs of such legislation were soon made manifest when the payment of county bonds, fraudulently issued, without any corresponding benefit having been received was disputed.

In the Lawrence County case, 1 Wright, 358, decided in 1860, where the Supreme Court of this State proposed to "stand alone," and refused to treat coupon bonds as negotiable, Judge Woodward justified their course by saying :

We know the history of these municipal and county bonds—how the Legislature, yielding to popular excitements about railroads, authorized their issue ; how grand juries, and county commissioners, and city officers were moulded to the purposes of speculators ; how recklessly railroad officers abused the overwrought confidence of the public, and what burdens of debt and taxation have resulted to the people. A moneyed security was created and thrown upon the market by this paroxysm of the public mind, and the question is now, how shall the judicial mind regard it ?

To this, Judge Grier replied, in *Mercer County vs. Hackett*, 1 Wallace, 96 :

Although we doubt not the facts stated as to the atrocious frauds which have been practiced in some counties, in issuing and obtain-

ing these bonds, we cannot agree to overrule our own decisions and change the law to suit hard cases. The epidemic insanity of the people, the folly of county officers, the knavery of railroad "speculators," are pleas which might have just weight in an application to restrain the issue or negotiation of these bonds, but cannot prevail to authorize their repudiation, after they have been negotiated and have come into the possession of *bona fide* holders.

So far as this State was concerned, the question had lost its interest, for in 1856 the Legislature submitted amendments, which were adopted in 1857, limiting the amount of indebtedness to be contracted by the State, and prohibiting the Commonwealth from promoting by loan or subscription any private or corporate enterprise, or from authorizing any municipal loan or subscription of a like character. These amendments, and that reserving the right to alter or revoke any charter of incorporation, were of inestimable value when the spirit of speculation shortly afterwards revived by the developments in the oil regions and the expenditures of the war.

The possibilities of private and special legislation were not, however, fully proven till after the war had stimulated the industries of the State into unprecedented activity. The annual volume of the pamphlet laws rapidly increased in size, and from 1864 to 1873 each is large enough to contain many pamphlets. The demand for the coal and iron of Pennsylvania, begun during the war, was kept up until 1873 by the growth of the railroad system of the country. Every mine and furnace and mill was kept running to its full capacity, but no department of manufacture was more active than the Pennsylvania Legislature. It turned out the *Credit Mobilier*, P. L. 1859, page 896; 1864, page 97, which contributed so much to the railroads, the politics, and the jurisprudence of the country. It granted hundreds of charters by simply giving to three favored names the powers enumerated in some other Act incorporated merely by reference. It even furnished charters upon condition that no organization should be affected or business done within the

confines of the State,<sup>1</sup> and such was the pressure upon its members that it became the habit to prepare laws for the signature of the Governor which had never passed either branch of the Legislature. Some of them are still on the statute book, and one of them was the subject of much debate in the courts. The Catawissa Railroad Company had obtained an injunction restraining a grade crossing, and thereupon a bill was introduced making such crossing unlawful. It was defeated in both Houses, but became, and still is, a law. P. L., 1871, 136. A like case of so-called legislation being under discussion, Senator Buckalew said :

Take the case of the bill of last winter in relation to the crossing of railroads, deliberately voted down, strongly voted down in both Houses; and yet, after we adjourned, there lay the bill in the executive chamber, passed by a clerk whose false and fraudulent hand had usurped the business of legislation. The Executive was informed by several persons that no such bill had ever passed. However, after a little while, the pressure was so great and the explanations were so admirable that he put his hand to the bill, and it is recorded among our laws.

Well, you have a committee of investigation on that subject; they are considering it; after a little they will make a report, possibly in favor of repealing the bill; possibly you may pass it through this chamber; but if any of those interests in the Commonwealth

<sup>1</sup> The New York and Colorado Vineyard Company was incorporated by an Act of February 16, 1866, and its supplement of February 17, 1870. Its character sufficiently appears in the opinion of the Supreme Court of Kansas, in the case of the *Land Grant Railway Company vs. The Commissioners of Coffee County*, 6 Kan., 245, where the Court said :

"No rule of comity will allow one State to spawn corporations and send them forth into other States to be nurtured and do business there, when said first mentioned State will not allow them to do business within its own boundaries. \* \* \* From the only territory in the whole world over which the State of Pennsylvania has any jurisdiction or control, and in which it could authorize a corporation to have an office or do business, it excludes this corporation, and the attempt on the part of the State of Pennsylvania to authorize this corporation to have an office or to do business anywhere else except in the State of Pennsylvania is *ultra vires*, illegal, and void. The truth is that while the supposed corporation was originally organized for the whole United States except the State of Pennsylvania, and afterwards, by its amended charter of February 17, 1870, for the whole world except the State of Pennsylvania, it had no legal or valid existence anywhere upon the face of the earth. At the very creation of this supposed corporation its creator spurned it from the land of its birth as illegitimate and unworthy of a home among its kindred, and sent it forth a wanderer on foreign soil. Is the State of Kansas bound by any kind of courtesy or comity or friendship or kindness to Pennsylvania, to treat this corporation better than its creator, the State of Pennsylvania, has done?"

that have an illegitimate and pernicious control over your legislation choose to say "no" to it, you cannot pass your repeal through the House of Representatives.

(Legislative Journal for the session of 1872, page 242.)

In a brief filed about that time, in a litigation where it was objected that a certain section had been fraudulently interpolated in a New Jersey Act, it was urged in reply that the parties then offering the objection had themselves profited by similar legislation, and had induced the court to rule that it was impossible to go back of the seal of the Secretary of State, and it was added that:

Judging from the reports in the *Legislative Record*, it would seem to have become quite a common thing at Harrisburg to have laws signed and recorded with provisions inserted, after having been emphatically rejected by the two Houses, or expunged after having been introduced; and what is curious is that a charge of this sort is made (see *Legislative Record*, 1872, pages 218, 241, 481, 500, 608, 672, 860, 1014, 1131) without producing any more show of surprise than would have been manifested by the 'minions of the Moon' (as Falstaff proposed that he and his fellow-thieves should be called when the prince became king) at the story of a highway robbery on Gadshill.

A more pertinent illustration might have been found in the diary of Mr. Pepys, who relates, under date of May 13th, 1664, that—

There was also in the Commons' House a great quarrel about Mr. Prin, and it was believed that he should have been sent to the Towre for adding something to a bill (after it was ordered to be engrossed) of his own head—a bill for measures of wine, and other things of that sort, and a bill of his owne bringing in; but it appeared that he could not mean and hurt in it. But, however, the king was fain to write in his behalf, and all was passed over.

"Pepys' Diary," Vol. IV, page 124.<sup>1</sup>

MAY 13th, 1664.

<sup>1</sup> Mr. Prynne having taken the liberty to alter the draught of a bill relating to public houses, having urged in his excuse "That he did not do it out of any evil intent, but to rectify some matters mistaken in it, and make the bill accord with the sense of the House," the House ordered him to withdraw, and after debate, being again called in, the Speaker acquainted him "That the House was very sensible of this great mistake in so ancient and knowing a member as he was to break so material and essential order of the House as to alter, amend, or interline a bill after commitment, but the House had considered of his answer and submission, and were content at this time in respect thereof, to remit the offense."

"Cobbett's Parliamentary History," Vol. IV, Col. 293.

It will be remembered by all who were then old enough to be admitted to practice that it had come to be generally believed that the lobby had as much to do with legislation as the members of the Senate and House, and charges of fraud were frequently circulated. So great was the dissatisfaction that finally the passage of an Act was secured under date of April 11th, 1872, submitting the question of calling a Constitutional Convention to a vote of the people, and a majority having been cast in its favor, the Convention assembled on the twelfth day of November, 1872. The members came together in a curious temper. With few exceptions they were animated with a spirit of bitter hostility to the Legislature, and one after another declared that they had only been sent there to put an end, if possible, to the frauds prevailing at Harrisburg. In order to recall the state of feeling, in which the Convention assembled and undertook the work of preparing the new Constitution, it will be well to quote the words of some of the representative members.

Mr. Wayne MacVeagh said :

We have never doubted that in all the days of our history honorable, honest good men have adorned the sessions of the State Legislature in abundance, and such men adorn it to-day. It is not, therefore, with any desire to wound the susceptibilities of any person, but from the earnest conviction that what we say is the truth, that we declare, notwithstanding the good men who have been there and are there now, the legislation of this State for private advantage has been and is often matter of bargain and sale. Unfortunately this is true of the Legislature of almost every American State, and even, as is being daily proven, of the National Legislature also. Gentlemen, this is the crying evil—the menacing peril of free institutions in America. This is the deadly cancer which is eating into the very heart of the body politic, and we will not help ourselves by crying that we are not sick; we will do no good to anybody by robing ourselves in the robes of an unrighteous indignation and declaring that we are as healthy, as sound and as pure as in the early days of the Republic. It is not so. The whole heart is sick and the whole heap faint with a vile disease, which is not new, indeed, but grows more cynical and therefore more hateful each day that the world lives in the light of a Christian civilization.



The pecuniary corruption of legislative bodies, the sale of legislation for private advantage—this is the gravest evil which afflicts us. Unlike mercy, Mr. Chairman, it curses him who gives and him who takes. It is erecting an impassable barrier in the pathway of our public service which will soon be a bar to any man who will not put a money value upon the honor and the virtue of a gentleman. One day it demands pay to prevent the repeal of a law already enacted. Another day it whines for compensation for supporting some just measure of public utility, perhaps even of the sacred charity of the State. The third day it openly exposes votes for sale as at a public auction to the highest bidder. While these facts are patent and known, it is not unkindness to anybody, it is not harsh criticism of anybody, which induces us to speak of them and to try, in some small way, to alleviate or to diminish them.

“Debates of Constitutional Convention,” Vol. I, page 423.

Judge Black delivered a carefully-prepared speech that has been published in the volume edited by his son, and is, therefore, easily accessible. In the course of his remarks he said :

After all that has been said upon this floor, it cannot be denied that the Legislature of the State of Pennsylvania has habitually and constantly, for the last twenty-five years or more, betrayed the trust reposed in its members ; and this has gone so far that we must have reform if we would not see our institutions perish before our eyes.  
\* \* \* There was a time when membership of our State Legislature was a passport to honor and admiration everywhere, from a Parisian drawing room to the cottage of a peasant. Now that same Legislature is a stench in the nostrils of the whole world. \* \* \*

My friend from Dauphin (Mr. McVeagh) spoke of legislation under the figure of a stream, which, he said, ought always to flow with crystal water. It is true that the Legislature is the fountain from which the current of our social and political life must run, or we must bear no life ; but as it now is, we keep it merely as ‘ a cistern for foul toads to knot and gender in.’ He has described the tree of liberty, as his poetic fancy sees it, in the good time coming, when weary men shall rest under its shade, and singing birds shall inhabit its branches and make most agreeable music. But what is the condition of that tree now ? Weary men do, indeed, rest under it, but they rest in their unrest, and the longer they remain there the more weary they become. And the birds—it is not the woodlark, nor the thrush, nor the nightingale, nor any of the musical tribe that inhabit



the branches of our tree. The foulest birds that wing the air have made it their roosting place, and their obscene droppings cover all the plains about them ;—the kite, with his beak always sharpened for some cruel repast ; the vulture, ever ready to swoop upon his prey ; the buzzard, digesting his filthy meal and watching for the moment when he can gorge himself again upon the prostrate carcass of the Commonwealth. And the raven is hoarse that sits there croaking despair to all who approach for any clean or honest purpose.

“ Debates of Constitutional Convention,” Vol. II,  
page 489.

Speaking of the practices which then prevailed at Harrisburg, Senator Buckalew said :

Suppose a bill is carried into the transcribing room on the last night of the session, and some transcribing clerk or assistant, or the clerk to the committee to compare bills, is paid fifty or one hundred dollars by a party to add a section to the bill. That section is simply added to or interjected into the transcribed copy, and goes to the office of the Secretary of the Commonwealth, and, inadvertently, the Governor signs the bill. That, sir, has happened over and over again. It is the common, the accepted mode, in which frauds in legislation are committed, and yet an inspection of the Journals of both Houses will not detect the fraud, and a provision that they shall be inspected is of no value whatever in a case of this kind.

Now, sir, I know the cases of two or three bills in which fraud was detected, not by the Journals of the two Houses, but by going to the original manuscript bill as introduced originally into one of the Houses, and to the proper bill which was sent from one House to the other, because thus you are able to find the original marks made by the clerks of the respective Houses upon all amendments when they are offered, and when action upon them is had. In that manner, in the cases to which I have referred, we were able to ascertain that certain amendments had not gone at all through the hands of the principal clerks of the Senate and House, and yet they were foisted into those bills, which, being sent to the Governor and signed by him, became laws of the Commonwealth, and no power of this State was able to touch them, except the Legislature, at a subsequent session by repealing them, should strike them from the statute book. I remember my experience in one case where a fraud was detected. The repealing bill was passed through the Senate upon the showing of the original records of the two Houses, not the Journals, and the bill was sent to the House of Representatives, and there there was a grave and earnest debate, and the repealing bill was manfully voted

down. The law stands there yet upon the statute book; a law passed by a transcribing clerk of the House, and by no other authority whatever.

*Ibid.*, Vol. II, page 775.

These speeches are fairly typical, and unquestionably represented the views of the large majority of the members of the Convention. Instead of the confidence that the members of the General Assembly would truly represent and protect their constituents, which prevailed in 1776 and 1790, and even in 1838, the dominant thought of the Convention was that all its energies should be given to the task of guarding the people of Pennsylvania against their own Legislature. They had had the benefit of a previous experiment, in that direction, in the Constitution adopted by the State of Illinois in 1870, and many of them had served in legislative bodies. They were familiar, therefore, with the ordinary rules of legislative procedure, and knew how rules were evaded and irregular and fraudulent methods practiced. The derivation of each clause in the new Constitution is given by Senator Buckalew in his admirable volume, which thus constitutes the most satisfactory of all commentaries, and it will be observed that many legislative rules were embodied in the Constitution and so made secure against any suspension in the closing hours of a session.

After having substantially reaffirmed the twenty-six sections of the Declaration of Rights of 1790, the amendments of 1838 and those of 1857, the Convention attempted to exclude the possibility of any motive to corrupt action, and to lessen the volume of legislation by excepting absolutely certain subjects from the general grant of the legislative power of the Commonwealth, and by denying the right to pass any local or special law relating to subjects enumerated in twenty-six clauses, or any local or special bill of any character, unless notice of the intention to apply therefor should have been published in the locality to be affected, as provided by law. Another practical innovation was the establishment of rules of procedure, intended to make each

branch of the Legislature a deliberate, if not a deliberative, body. The requirements that every bill shall be read at length on three different days in each House; that all amendments shall be printed, and that the final vote shall be taken by yeas and nays,—preclude any member from asserting that he had not the opportunity to become acquainted with its provisions; and the further requirement that no bill shall become a law unless a majority of the members, elected to each House, be recorded thereon, as voting in its favor, is an effectual safeguard against legislation by a Speaker and a minority of the members of each House.

In short, they did not intend to make it easy to pass laws, and while they did not adopt the provision of the Constitution of 1776, “that except on occasions of sudden necessity bills should not be passed into laws until the next session of the Assembly”—a curious anticipation of the *referendum*, now so much talked about—they did provide that the General Assembly should meet every second year, and hold no adjourned annual session after 1878. The results of these rules of procedure, coupled with a reduction in the subjects of legislation (which has worked a change in our pamphlet laws like that which Sydney Smith pronounced the most important of all distinctions in literature—that between the antediluvian and the postdiluvian) has been to make it possible for each member to exercise something like intelligent and discriminating judgment in respect to every bill which becomes a law; and it is, I believe, the judgment of the profession that even now the legislation since 1874 is better, both in form and in substance, than that of preceding years.

In pursuance of a resolution adopted at the last annual meeting, a bill has been prepared by the Committee on Law Reform for the appointment of Legislative Commissioners which would insure still greater accuracy of expression, and greatly improve the general character of our legislation. It is in the same line as an Act reported at the last session of the Legislature of New York by a commission appointed to

recommend changes in methods of legislation. Time will not permit me to say more upon this important subject, and it will be more appropriately discussed by the committee; but, after all, the greatest advantage secured by the methods prescribed by the Constitution is not so much the improvement in the character of the bills which do become laws, as in the possibility that now exists of arresting those which ought not to pass. In these days, when there is a disposition to correct every human ill by government interference, it is no small gain that lawmaking in Pennsylvania has been made so difficult and so dilatory; and our greatest obligation to our representatives is not so much for the laws they make as for the vastly greater number they defeat.

The great change, however, in the Constitution of 1874 was one of substance rather than of form.

The prohibition of special legislation was regarded as the most important of all the amendments, and it has had the greatest influence upon the volume and character of subsequent legislation. The power to pass a special Act precisely fitted to the special case, without disturbing the general rule, was a most valuable power, and it would never have been taken away from the Legislature of Pennsylvania had not the experience of the previous ten years demonstrated that when a legislative body had the power to grant special privileges having a pecuniary value, such privileges would come to be bought and sold like any marketable commodity. The only way to put an end to this mischief was to lead the Legislature, if possible, out of temptation, by taking from it everything it had to sell. This is of the essence of the Constitution of 1874. It rests upon the assumption that if men have a motive to buy legislation, they will, in the long run, either succeed in corrupting the members already elected, or take care that others are chosen who can be seduced. Stated in this bald way, this seems a low, repulsive view of human nature, but it is identical with that enforced by courts of equity in all dealings with his trust by one in a fiduciary relation. The danger of abuse is so great that no inquiry into the fairness of the particular

transaction will be entered upon. For the safety of beneficiaries in all cases, in none can the trustee acquire an adverse interest, or, as Mr. Justice Story expressed it : " It is to interpose a preventive check against such temptations and seductions that a positive prohibition has been found to be the soundest policy, encouraged by the purest precepts of Christianity."

Remembering the condition of things at Harrisburg prior to 1874, it must be admitted that the inconveniences which are now often made the subject of complaint would be of relatively trifling importance if a complete reform had been effected. Upon this question others are better qualified to speak. The organized lobby, which possessed Harrisburg, disappeared when the new Constitution was adopted, and it has not yet returned. Representatives of corporate and other interests are still in attendance, and the reports which are occasionally heard, of outside interference in legislation, may be well founded. Franchises having large value are still occasionally wanted, but as they can only be conferred by general laws, they become, when once given, available for all. It seems fairly reasonable to hope, therefore, that there is no imminent danger of such demands for corporate or other legislation as will renew the baleful influence which once prevailed in Harrisburg, but there is a danger to which attention should be called. The seventeenth section of article three provides that " no appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth \* \* \* except by vote of two-thirds of all the members elected to each house," and such appropriation, by the fifteenth section, must be by separate bill which embraces but one subject.

It would seem that these provisions were ample to guard against the possibility of abuse, but during the session of 1895 more than one hundred and twenty appropriation bills of this character were passed, appropriating, in the aggregate, over a million and a half of dollars. As to the policy of collecting from the taxpayers of the State this vast sum, for the purpose of distributing it among the charities of the State, this is not the place to speak ; but it is relevant to the

subject of this paper to point out that every one of these appropriations must have been the subject of direct appeal to committees of the Legislature, and of communication with many individual members. The mere waste of time is not a slight evil, but it is not the worst. The tendency of such appeals and of such appropriations is the same as in the case of private charters and other special legislation. Solicitation and importunity from the outside will sooner or later meet with exactions from the inside; and if these matters shall once be made the subject of chaffer and bargain, the office of lawmaker will again become one of profit.

To maintain and advance the standard of membership is the most imminent and imperative duty now pressing upon the profession. Lawyers will always constitute a majority of the Legislature, and they represent the bar in a double sense. If the leaders from all parts of the State could be induced to serve, the duration of the session might be still further reduced, which would in turn render it possible for men in the most active practice to act, so that even Philadelphia might once more have representatives like Sharswood, Meredith, and Eli K. Price. To insure such representation is more essential now than ever, for no written constitution will work itself; and if that of 1874 does not render the Legislature unattractive to the unfit and make the worthy willing to undertake the discharge of its duties, no hope remains—*nullam salutem sperare*. Whatever wisdom, learning, ingenuity and experience could suggest to prevent the abuse of the discretion, necessarily confided to the Legislature of the Commonwealth, was adopted. No power was given that could safely be withheld, and no reasonable regulation of its use was omitted.

It remains with us to see to it that a system planned and framed with so much care and so much skill shall not fail through our indifference and neglect. If the members of the Bar of Pennsylvania choose to exert their combined influence in favor of the election of fit men, of the enactment of only wise and needed legislation, and of the maintenance of the good name of the Commonwealth, they will not fail.

They need only to have confidence in themselves and interest in the work to be done. Let those of us who are here devote ourselves to that work, in the spirit in which Burke addressed himself to his lofty purpose: "If we are conscious of our situation, and glow with zeal to fill our places as becomes our station and ourselves, we ought to auspicate all our public proceedings on America with the old warning of the church, *Sursum corda!* We ought to elevate our minds to the greatness of that trust to which the order of Providence has called us."

[NOTE.—After the delivery of the foregoing address, Judge McPherson called my attention to a report of a joint Committee on the Financial Affairs of the Commonwealth, 1838-1843, which was printed in May, 1878, and subsequently furnished a copy. As it is now out of print it has been thought desirable to reprint it in the Appendix.—S. D.]

MR. DICKSON, *President*: The first business in order is the report of the Executive Committee.

MR. READING, *Lycoming*: As Chairman of the Executive Committee, I beg to present its report as follows:

### EXECUTIVE COMMITTEE'S REPORT

*Your Committee submits the following report:*

The membership of the Association immediately after the close of the annual meeting, in 1895, was 651

The following losses are to be noted:

#### BY DEATH

Grant Weidman, Lebanon, Pa., died November, 1895.

Henry D. Weirman, Phila., died May 30, 1895.

#### BY RESIGNATION

F. A. Lewis, Philadelphia.	3
	<hr/>
	648
New members prior to July 7th,	74
	<hr/>
Total,	722
NOTE.—Additions since July 7,	41
	<hr/>
Making total to July 30,	763

That the President, after submitting the question of the expediency of time and place to the members of all standing committees, and responses from members generally being unanimously favorable, called a meeting for December 19, 1895, at the Lawyers' Club, Philadelphia. The rooms of the club were placed at the disposal of the committees for the day.

The membership of your Standing Committees aggregates 150, from every County in the State, and, despite the long distance to be traveled, upward of 80 members answered to the roll call.

A general meeting of all committees was called to order by Vice-President Henderson, of Cumberland, in the reception room, when the roll was called, and a separate room assigned to each Committee in which to hold its sessions.

The Executive Committee organized by the election of John G. Reading, of Lycoming, as chairman. Present: Samuel Dickson, President; Robert M. Henderson, Cumberland, Everett Warren, Lackawanna, Wm. Hayes, Chester, Vice-Presidents; William Penn Lloyd, Cumberland, Treasurer, Edward P. Allinson, Philadelphia, Secretary, members *ex-officio* of the Executive Committee; William U. Hensel, Lancaster; M. E. Olmsted, Dauphin; John G. Reading, Lycoming; Thomas Patterson, Allegheny; C. H. McCauley, Elk; W. H. Oram, Northumberland; W. S. Kirkpatrick, Northampton; Geo. W. Heiges, York; Robert E. Wright, Lehigh; R. H. Lindsey, Fayette; S. V. Wilson, Clearfield; Wilson C. Cress, Clinton; Montgomery Evans, Montgomery; F. P. Prichard, Philadelphia; J. B. Colahan, Philadelphia; Rodney A. Mercur, Bradford; George R. Bedford, Luzerne; N. P. Mervine, Blair.

This committee arranged, after conference with all other committees, to hold the next Annual Meeting on July 8, with Cresson as first choice and Bedford second, according to the possibilities of proper accommodations at the time selected. A cordial invitation to meet at Erie was received with appreciation, and had strong support, but a more central location



was favored, by the majority, for the next meeting. The question of programme and arrangements for the annual meeting was referred to a sub-committee with power to act, and with directions to confer with the Law Committee on the subjects for the two papers to be read by members, it being the sense of the meeting that a member of the Bar from some other State be invited to deliver the annual address.

The Committee on Law Reform, Alex. Simpson, Jr., Chairman, sat all day, from 10.30 to 6, and considered and agreed to report three measures for the consideration of the Association. The other members present were James S. Young, Allegheny; George F. Baer, Berks; Hon. Edward W. Biddle, Cumberland; M. W. Jacobs, Dauphin; Hon. Nathaniel Ewing, Fayette; Hon. Lemuel Ammerman, Lackawanna; Richard E. Cochran, York.

Of the Committee on Admissions there were present: Hon. Henry W. Palmer, J. Frank E. Hause, J. W. Wetzel, Seth T. McCormick and James Scarlet.

On motion of J. W. Wetzel, Hon. H. W. Palmer was elected temporary Chairman.

On motion of Mr. McCormick, Mr. J. W. Wetzel was elected Secretary.

The Chairman laid before the committee the form of application, etc., submitted by Executive Committee and Secretary of Association.

The following form was adopted:

*Form of Application for Membership*

The undersigned, a member of the Bar of the Supreme Court of Pennsylvania, admitted on the..... day of.....(or if a Judge in commission, state date of first election or appointment), hereby applies for membership in the Pennsylvania Bar Association, and authorizes the Secretary to enroll his name on the list of members, which enrollment shall be equivalent to a signature to the roll containing the charter and by-laws within the meaning of Section 6, Article XI, of the By-Laws.

Enclosed herewith find check or.....  
for five dollars, to cover admission fee and annual dues for  
current year.

Signature.....  
(Giving full name.)

P. O. Address.....

County.....

We, the undersigned, members of the Pennsylvania  
Bar Association, do hereby certify that the above applicant  
is a member of the Supreme Court from .....  
County, Pa., in good standing, and we recommend him for  
membership in the Pennsylvania Bar Association.

.....  
.....  
.....  
.....

Several letters of application as members, which had  
been received by the Secretary of the Bar Association, were  
referred to the committee.

Of the Committee on Grievances there were present  
Hon. Christopher Heydrick, Venango, Chairman; George  
R. Bedford, Luzerne; H. F. Walton. No minutes of this  
meeting were handed in to the Secretary of the Association.

The Committee on Education, Robert Snodgrass, Dau-  
phin, Chairman, held two sessions, during which questions  
relating to the requirements for registration and admission  
were elaborately and earnestly discussed.

The Chair was directed to appoint two committees, one  
of seven to take into consideration the whole subject of  
Legal Education, and to recommend a curriculum for both  
preliminary and final examination. Second, a committee of  
five to take into consideration the subject of making exami-  
nations uniform throughout the State, and to recommend  
the means by which this end may be attained; these commit-  
tees to report to the General Committee at the July meeting.

The members present were as follows: George Wharton

Pepper, Philadelphia; Andrew J. Kauffman, Lancaster; Edward J. Fox, Northampton; J. M. Force, Erie; Hon. E. R. Savidge, Northumberland; William Trickett, Cumberland; Sidney R. Miner, Luzerne; Robert Snodgrass, Dauphin, Chairman; Delos Rockwell, Bradford; R. T. Cornwell, Chester; Alex. King, Bedford; Joseph W. Moyer, Schuylkill; Louis Richards, Berks; Angus V. Dively, Blair; William Kase West, Columbia; Hon. J. A. McIlvaine, Washington; Hon. Jeremiah Lyons, Juniata; Frederick Bertollette, Carbon; James W. Pyatt, Wyoming; Hon. L. A. Watres, Lackawanna; Henry C. Parsons, Lycoming; George E. Darlington, Delaware; Frank H. Laird, Beaver; F. G. Hobson, Montgomery; Hon. D. Watson Rowe, Franklin.

Equal interest was manifested in the possible work of the Committee on Legal Literature and Biography, which had a good attendance of members. The opening suggestions of the chairman, Hampton L. Carson, of Philadelphia, were well received, and their deliberations soon showed that they had before them a work of much interest to all. The members present from this Committee were as follows:

County	Residence
Philadelphia . .	HAMPTON L. CARSON, <i>Chairman</i> , Philadelphia.
Northumberland .	CHARLES M. CLEMENT, <i>Vice-Ch'n</i> , Sunbury.
Lycoming . . . .	C. LARUE MUNSON, <i>Secretary</i> . Williamsport.
Luzerne . . . . .	GEORGE B. KULP . . . . . Wilkesbarre.
Greene . . . . .	DANIEL S. WALTON . . . . . Waynesburg.
Chester . . . . .	JAS. MONAGHAN . . . . . West Chester.
York . . . . .	DANIEL K. TRIMMER . . . . . York.
Mifflin . . . . .	T. M. UTTLEY . . . . . Lewistown.
Clinton . . . . .	H. B. HARVEY . . . . . Lock Haven.
Washington . . .	JAMES I. BROWNSON . . . . . Washington.
Perry . . . . .	WM. N. SEIBERT . . . . . New Bloomfield.
Wyoming . . . .	CHARLES E. TERRY . . . . Tunkhannock.
Lackawanna . .	WM. A. WILCOX . . . . . Scranton.
Cambria . . . .	HON. A. V. BARKER . . . . . Ebensburg.
Beaver . . . . .	W. T. MOORE . . . . . Beaver.
Franklin . . . .	HON. WM. U. BREWER . . . Chambersburg.
Berks . . . . .	D. N. SCHAEFFER . . . . . Reading.
Northampton .	WM. C. LOOS . . . . . Bethlehem.

The committee met with Hampton L. Carson, Esq., of Philadelphia, the chairman, in the chair, and selected Charles M. Clement, Esq., of Sunbury, as vice-chairman, and C. LaRue Munson, Esq., of Williamsport, as secretary.

Messrs. W. U. Brewer, chairman ; Geo. B. Kulp, James Monaghan, H. L. Carson, Daniel S. Walton and D. N. Schaeffer were appointed a sub-committee to receive, revise and edit memorials of deceased members of the Association, and to formulate some general rules regulating such memorials.

Messrs. C. M. Clement, chairman ; C. LaRue Munson, Hon. A. V. Barker, H. L. Carson, William A. Wilcox and H. T. Harvey were appointed a sub-committee to which was referred so much of Sec. 36 of the By-laws as provides for the preservation of such facts relating to the history of the profession as may be of interest.

The committees adjourned for lunch, which was served in the banquet room of the club.

In the afternoon the work of each committee was resumed. In the evening, from eight to twelve, a reception, given by the Bar of Philadelphia to these committees as their guests, crowded the capacity of the club's commodious rooms, which was attended by some two hundred of the Philadelphia Bar, representatives from the Supreme, Superior and Philadelphia Courts, and from several of the neighboring counties. The occasion was a pleasant one socially, but it had a more serious and valuable significance. It was most encouraging to all concerned that so many busy professional men, of such acknowledged standing, felt sufficient interest and confidence in the future of the Pennsylvania Bar Association to travel so far and devote valuable time to its service.

This is a renewed proof of the recognition by the Bar that the Association is a necessary organization for the advancement of the practice and science of the law.

At the several meetings of the committees, minutes were adopted expressing appreciation of the compliment extended by the Philadelphia Bar, and of the courtesy which so freely

placed the entire quarters of the Lawyers' Club at the disposal of the organization during the whole of the meeting on December 19th.

The Sub-Committee on Programme and Arrangements made the following assignments in order of business :

Pennsylvania Bar Association programme for second annual meeting, Bedford Springs, July 8 and 9, 1896.

JULY 8, 1896.

MORNING MEETING AT 10 O'CLOCK.

ORDER OF BUSINESS.

Address by Samuel Dickson, President.

Reading of Minutes.

Reports of Committees.

AFTERNOON SESSION.

Consideration of Report of Committees.

Appointment of delegates to the American Bar Association.

Reading of Bills for proposed legislation.

EVENING SESSION.

Annual Address by Cortlandt Parker, Esq., of New Jersey.

Papers discussing " The Proposed Libel Law of the Pennsylvania Editors' Association " by Hon. S. P. Wolverton and William B. Rodgers, Esq.

Paper on " The Forensic Functions of the Lawyer " by William Trickett, Esq.

JULY 9, 1896.

MORNING MEETING AT 10 O'CLOCK.

Consideration of papers read the night before ; unfinished business.

Special business which may have been referred to this meeting by order of the Association at prior sessions.

## AFTERNOON SESSION.

Election of Officers.

Unfinished business. New business.

Banquet 6 o'clock, P. M., July 9, 1896.

The banquet will be presided over by Hon. John Stewart.

The following toasts have been assigned :

Pennsylvania, Hon. Daniel H. Hastings ;

The Bar, Hon. M. Russell Thayer ;

The Bench, Hon. Henry W. Palmer.

The Legislature:

Senate, Hon. William U. Brewer ;

House, Hon. H. F. Walton.

The Client, C. LaRue Munson ;

Ourselves. At the call of the Toast Master.

In accordance with instructions given by the Executive Committee, correspondence was had with the management of the hotel at Cresson, with the result that it was then impossible to secure sufficient accommodation at their place on the date fixed for the present annual meeting—or indeed for any date later than June 20th. Similar inquiry elicited the same results as to the hotel at Glen Summit, near Wilkes-Barre, and at Paxsanosa Inn, near Easton.

Within a few days of the meeting, several gentlemen who had been assigned for duties called for by our programme were obliged either to send regrets about being unable to attend or defaulted without giving any adequate notice to your committee.

It cannot be expected that busy men can always control their time so as to be able to attend a convention fixed for a given and distinct date, yet when an assignment for a set duty has been made and accepted, it would seem a proper recognition both of the honor conferred by the Association and the duty to an assignment from the Bar of Pennsylvania would require the appointee to at least prepare and file his paper with the Secretary in time for it to be read for him at the meeting, or in the case of a toast to send ample notice as soon as circumstances make non-attendance certain.

The assignments are not unadvisedly made, and mem-

bers should remember the importance of fidelity in the discharge of such appointments when once accepted.

Pleasant as the annual gatherings may be, the underlying purpose of this Association lies far deeper than the ordinary social gathering, and no man is so distinguished as to fail to recognize that his distinction is less than that of the entire Bar of Pennsylvania, in contempt of whom such action places him.

JOHN G. READING,  
*Chairman.*

EDW. P. ALLINSON,  
*Secretary.*

THE PRESIDENT: Gentlemen, you have heard the report, what action shall be taken upon it?

MR. ASHHURST, Philadelphia: I move the report of the Executive Committee be accepted.

Seconded and agreed to.

THE PRESIDENT: The next business is the report of the Treasurer.

MR. LLOYD, *Treasurer*: I beg to submit the following as the Treasurer's report:

### REPORT OF TREASURER

*To the Pennsylvania Bar Association:*

BEDFORD SPRINGS, PA., *July 8, 1896.*

Report of Wm. Penn Lloyd, Treasurer of the Pennsylvania Bar Association, showing the receipts and disbursements from the organization of the Association to July 7, 1896, the date of its second annual meeting.

The Financial Statement made by the Treasurer to the Association July 10, 1895, and to the Executive Committee December 19, 1895, are covered by this report.

Number of Members as shown by the first annual report of the Secretary . . . . .	659
Number of Members admitted since publication of said report . . . . .	63
Total number enrolled . . . . .	722

## DR.

To Amount received as Membership Fees and First Year's Dues . . . . .	\$3,610.00
To Amount received as Second Year's Dues . . . . .	1,960.00
	<hr/>
	5,570.00

## CR.

1895.

May 10	By Cash Pd.	Thomas Print'g House, Voucher No. 1, \$ 44.04
	do	Thomas Print'g House, Voucher No. 2, 3.00
18	do	W. H. Murphey's Sons, Voucher No. 3, 22.50
20	do	J. W. Wister, Express, Voucher No. 4, 1.00
June 15	do	Thomas Print'g House, Voucher No. 5, 30.27
18	do	C. Clendenin, Postmas- ter, Voucher No. 6, 6.00
20	do	W. H. Huber, Voucher No. 7, 3.85
July 12	do	Banquet, do 8, 492.50
Sep. 21	do	T. A. Fenstermaker, Voucher No. 9, 140.25
	do	W. A. Moorehouse, Voucher No. 10, 8.00
	do	Chas. G. Artzel, Voucher No. 11, 81.00
Oct. 2	do	T. F. Gutekuntz & Co., Voucher No. 12, 174.75
10	do	Geo. H. Buchanan & Co., Voucher No. 13, 7.85
15	do	Geo. H. Buchanan & Co., Voucher No. 14, 925.60
16	do	Geo. H. Buchanan & Co., Voucher No. 15, 4.50
Dec. 12	do	M. E. Olmsted, Charter, Voucher No. 16, 67.20
18	do	Cash disbursements by the <i>Legal Intelligencer</i> for account of the As- sociation, Voucher No. 17, 203.39



## REPORT OF TREASURER

Dec. 19	By Cash Pd.	Edward P. Allinson,		
		Cash advances,		
		Voucher No. 18,	145.87	
	do	Secretary, Clerk hire		
		Dec., '95,		
		Voucher No. 19,	250.00	
	do	Treasurer, Clerk hire		
		Dec., '95.		
		Voucher No. 20,	250.00	
1896.				
Jan. 9	do	J. W. Wetzel, Admission		
		Committee		
		Voucher No. 21,	21.57	
Apr. 2	do	Times Printing House,		
		Voucher No. 22,	9.90	
May 22	do	Julius Sachse,		
		Voucher No. 23,	118.80	
June 6	do	Thomas Print'g House,		
		and Postage,		
		Voucher No. 24,	55.00	
26	do	Geo. H. Buchanan & Co.,		
		Voucher No. 25,	14.00	
27	do	F. L. Hutter, Blank		
		Book,		
		Voucher No. 26,	7.00	
28	do	J. W. Wister, Express,		
		Voucher No. 27,	6.45	
			<hr/>	\$3,094.29
		Balance in hands of Treasurer,		2,475.71
				<hr/>
				\$5,570.00

Respectfully submitted,

WM. PENN LLOYD,

*Treasurer.*

NOTE.—Of the 722 Members reported, two have died and one has resigned, leaving present number 719.

The within account audited and found correct, July 9, 1896.

GEO. R. BEDFORD,

JOHN G. READING, JR.,

*Auditing Committee of Executive Committee.*

**THE PRESIDENT:** A motion to refer the Treasurer's report and vouchers to the Executive Committee will be entertained.

**MR. COLAHAN, Philadelphia:** I move that the Treasurer's report and vouchers be referred to the Executive Committee.

Seconded and agreed to.

**THE PRESIDENT:** The next in order is the report of the Committee on Admissions.

### **REPORT OF COMMITTEE ON ADMISSIONS**

**MR. WETZEL, Cumberland:** As Secretary of the Committee on Admissions, I have here a list of applications received and approved since December last. Under the present By-Laws, we understand that our action is subject to the approval of the Association as a whole. We have recommended a change in the By-Laws, which will come before the Association.

**THE PRESIDENT:** Under the By-Laws the recommendation of the committee must be confirmed by a three-fourths vote of the Association. It has been suggested that the list be posted up on the bulletin board, and that the vote be taken to-morrow morning. If no objection be urged, that action will be taken.

There being no objection, the Committee on Grievances will present its report.

As the Chairman of that committee does not seem to be present, the report of the Committee on Law Reform is next in order.

**MR. SIMPSON, Philadelphia:** The Committee on Law Reform offers the following report:

### **REPORT OF COMMITTEE ON LAW REFORM**

*To the Pennsylvania Bar Association:*

**GENTLEMEN:**

"The question of the technical revision of bills before the Legislature," which was referred by the Association to

this committee for consideration and report, is a matter that for some years has attracted widespread attention, has been the subject of thesis, report and debate in the American Bar Association, and many of the State and Local Bar Associations, as well as of articles in magazines and reviews. Unfortunately but little practical result has yet been obtained.

At the 1881 meeting of the American Bar Association, Mr. Henry Stockbridge, of Maryland, offered the following resolution :

*Resolved*, That the Committee on Jurisprudence and Law Reform be requested to inquire into and report, at the next session of the Association, upon the expediency of establishing, in connection with the legislative department of the State governments, a committee, or a legal board, whose duty it shall be, from time to time, to prepare such bills for the Legislature as the progress of events, or the consolidation of existing statutes, may require ; and to which shall be referred public bills which may be pending that they may receive proper form, be made to harmonize in their several parts, and be put in such terms as to accomplish the object of their enactment.

This resolution, which was, as to its subject-matter, at the same time too broad in some respects and too narrow in others, was much debated, but was finally carried with the addition thereto " that if the committee should deem such a commission or board practicable, they be requested in their report to indicate the best mode of constituting and establishing the same."

In 1882, the committee, consisting of William Allen Butler, Simeon E. Baldwin and Henry Hitchcock, made a report upon the subject, and recommended the adoption of the following resolution, which sufficiently shows the conclusion at which they had arrived :

*Resolved*, That in view of the growing evil of hasty and ill-considered legislation, and of defective phraseology in the statute law, this Association recommends the adoption by the several States of a permanent system, by which the important duty of revising and maturing the Acts introduced into the Legislature shall be intrusted

to competent officers, either by the creation of special commissioners or committees of revision, or by devolving the duty upon the Attorney-General of the State.

Unfortunately, this resolution was crowded out of consideration, owing to the debate upon the report relative to the relief of the Supreme Court of the United States.

In 1884, Mr. Simon Sterne, of New York, read a paper before the same Association on "The Prevention of Defective and Slipshod Legislation," which reawakened interest in this subject, and the paper was referred to the Committee on Jurisprudence and Law Reform to suggest a bill. This committee, consisting of Simeon E. Baldwin, Henry Hitchcock and Simon Sterne, suggested a bill as follows:

#### AN ACT

#### TO CREATE A JOINT STANDING COMMITTEE FOR THE REVISION OF BILLS.

SECTION 1. Within the first ten days of every stated or special session of the (here insert the proper name of the legislative body), the President of the Senate shall appoint five Senators and the Speaker of the (House) shall appoint five members of the (here insert House of Representatives, Assembly or other proper designation of the other House), who shall together constitute a joint standing committee for the revision of bills. Said committee shall have power to require the assistance of the Attorney-General and his presence at their sessions, or, in case of his inability to act, to employ counsel and to fix, subject to the written approval of the Governor, the compensation to be paid such counsel.

SEC. 2. Every bill shall, after the same shall have passed the Legislature, and before it is signed by the presiding officer of either house, be submitted to said joint committee for report thereon, and said committee shall report the same back to the house in which it originated. Said report shall contain such suggestions for amendments as may by said committee be regarded as necessary to make the bill express clearly the intention of the Legislature, and harmonize with existing statutes and constitutional provisions, or shall state that in the opinion of the committee no amendments are necessary. Said bill shall then be considered and acted upon as to its final passage.

It seems to us that this suggested bill is objectionable in several respects. The members of the Legislature could not properly fulfil the duties of such an appointment unless they abandoned all other legislative work. They neither would be nor should be willing to do this. The men thus practically withdrawn from real legislative work, if fitted to fill this place, would be the men most needed in the Legislature. Such a committee should be under no temptation to log-roll; nor should it be under the natural influence of preparing a report it could successfully carry, rather than one that plainly stated the facts and law. It would seem also that a report which appeared after the members had taken sides, or had pledged their votes, would be of minimum value.

In 1889, another report on this subject was made to the American Bar Association by its Committee on Jurisprudence and Law Reform, and an extended debate had, but nothing new was developed.

In 1891, in a paper on "State Legislation," read by Mr. Frank P. Prichard before the Law Association of Philadelphia, the writer in considering this question said, *inter alia* :

I cannot better describe the general method or want of method of State Legislatures than to quote from an article in the *Nation*, discussing a recommendation of the Governor of New York that the Legislature should be afforded some professional assistance in the framing of laws.

The author says: "In order to understand the necessity of some professional assistance it is only necessary to recollect how lawless, so to speak, our legislative system is. The Legislature, in the first place, meets on the first Monday of January in each year, sits as long as it pleases, and transacts business as hurriedly or as slowly as it pleases. A large proportion of both houses are absolutely without experience. No laws are prepared in advance by the executive or by any responsible body, though they may be, of course, by secret caucuses or committees. The first days of the session are spent in fixing the committee, behind the scenes, in the interest of corporations and others who may desire private legislation. No notice is given of what private bills are going to be introduced. As soon as business begins a great crop of bills are introduced, most of which are designed to give

some person or corporation a special privilege under, or exemption from, the operation of laws binding the community. These bills are drawn up not by the legislators who introduce them, but by lawyers privately retained and paid by the special interests behind the bill, and who, naturally enough, as long as they get what their clients want, care very little what the effect on the general body of the law may be. When the bills thus prepared get into committee there are no rules of any value governing the procedure with regard to them. Those interested adversely have not necessarily any notice to appear; there is no attempt to take proof judicially, but counsel are permitted to make any statement they please. Towards the end of the session, bills are hurried through pell-mell, without any actual previous consideration at all."

This comparison shows how widely different are the existing conditions in England and America, and how imperative it is that, so long as we maintain our present system, we should originate some new methods of checking the evils which it engenders.

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In the case of the Judge who declares the law, we not only insist that he shall be a man trained and educated in the science which he applies, but we so mould judicial procedure that before he reaches a decision he will probably receive all the information on the subject which trained counsel can give him. We provide for argument and re-argument and appeals to other judges, so that when the final result is reached every historical fact and every recorded opinion that bears upon the subject shall be brought to the attention of the judicial mind to aid it in reaching a just conclusion. What a contrast to this system is our treatment of legislation. The personnel of the Legislature is, from necessity, constantly changing. The members, as a rule, have no training in the science of framing laws. They are exposed to temptations to which the judges are strangers, and they are compelled to work in a hurry and turmoil unknown to a court. Yet we provide no means for giving them the information necessary to arrive at a just conclusion. If a bill is introduced, no method is provided by which the members can be informed what is the existing state of the law; what other laws exist on the same subject; what other similar bills are then pending; what similar legislation has been tried elsewhere, and with what result; whether the law is in accordance with the Constitution; whether its language is clear and accurate; what is the exact nature and extent of the evil to be remedied; and what the probable effect of the new law. No one will pretend that such information is not as essential to the formation of an opinion as to a new law, as the analogous information is to the judge who is to decide upon the extent of

the old law. Nor will it be pretended that the members can themselves acquire this information as to all the various bills introduced in the course of a session. Yet because without this information our Legislatures do not pass wise and accurate laws, we straightway restrict their power, and conclude that they are hopelessly corrupt or invincibly ignorant, and that the less use we make of them in the government the better. We might as well provide that all litigants should, without the aid of counsel, lay their cases before untrained arbitrators and expect a scientific and accurate adherence to the common law in the decisions. If the subject were not so serious the contrast between our judicial and our legislative system would be ridiculous in the extreme.

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It follows logically, from what has been said, that one of the first steps towards the improvement of legislation must be to give to the Legislature, as far as possible, the same kind of information and assistance that is furnished to the courts. In England, this is accomplished as to public statutes by the assistance of trained counsel, and as to private statutes by regular judicial proceedings with their attendant legal arguments. In this country, however, we have made most laws general in form, and we have no responsible ministry to employ counsel to frame or criticise bills. There would seem, however, to be no good reason why we should not give to the Legislature the assistance of trained specialists in the framing of bills, and in the examination of the general subject to which the bill relates.

\* \* \* \* \*

To make the work of a revising board of any practical use, three things are essential:

*First.*—That the board shall be composed of men of equal standing with our judges, made like them independent by large salaries and permanent positions, and having no other duties to perform.

*Second.*—Its work must be purely advisory work, giving to the Legislature information and suggestions, and it should take no part in legislative discussions or votes.

*Third.*—Its work must be performed at an early stage of each bill, before discussion of the bill by the Legislature.

If I may venture a suggestion, I would say that there should be created either a permanent officer or board of officers, to whom every bill introduced into the Legislature should be at once referred, and whose duty it should be to make a printed report, which should

accompany the bill into the hands of each member and which should embody :

1. The existing law, and the change proposed.
2. Existing statutes on the same subject.
3. Similar legislation pending before the Legislature.
4. Analogous legislation elsewhere.
5. Suggested amendments of substance.
6. Suggested amendments of language.

If this were done, the committee to whom the bill was referred, and the members who were called upon to vote upon it, would be able to approach the subject with some, at least, of the information necessary for intelligent consideration. And if before third reading any change or amendments made to the bill should be again submitted for a supplementary report, the chances of error would be greatly diminished. At least we would have no longer those instances, now only too frequent, of bills, the language of which is grammatically incorrect and rhetorically obscure, and of two or more inconsistent bills passed on the same subject almost at the same moment.

We have quoted largely from this paper because it seems to us to take the true position on the subject.

The New York State Bar Association has recently taken up the subject with its usual vigor, and on February 6, 1893, succeeded in getting passed an amendment to their "Legislative Law," as follows :

SEC. 23. It shall be the duty of the Commissioners of Statutory Revision, on request of either House of the Legislature, or of any committee, member, or officer thereof, to draft or revise bills, to render opinions as to constitutionality, consistency, or other legal effect of proposed legislation, and to report by bill such measures as they shall deem expedient.

It soon became apparent that no one would ask for advice or report upon bills which were to be "snaked" through the Legislature, and hence the amendment was of little value. Renewed efforts were at once made by the Law Reform Committee of that Association, under the able chairmanship of Mr. Fiero, resulting in a report which can best be stated in the following extract from the annual address of their President, Mr. Tracy C. Becker, at the 1895 meeting.



It (an unsuccessful attempt by the Association itself to watch all legislation) has demonstrated more forcibly than ever the supreme necessity of the adoption of a law providing for a board or council of revision, to which all statutes should be referred before their adoption and final transmission to the Governor for his approval. Such a board or council could also assist the members in drafting bills properly, to begin with, and in many ways aid in statutory revision, and in the proper performance of their legislative duties by the senators and members of assembly. As will appear more fully in the report of the Committee on Law Reform, inquiries directed to the Secretary of State of each of the States of the Union, elicited replies showing that the only States which have provision for such a board or council, or something of the kind, are Maine, South Carolina and Connecticut. In England the counsel to the Speaker of the House of Commons, who receives \$9000 per annum for his services, performs some of the duties which would be devolved upon such a board or council. In the Dominion of Canada the Senate has a law clerk salaried at \$2500 per annum, and the Commons one at \$3200 per annum. The Ontario Legislative Assembly also has a law clerk; and in England and Canada the duties of parliamentary draftsmen are exercised, as to private bills, by officers employed by the committees. In the Northwest Territory three legal experts sit in the Legislative Assembly by virtue of a statute, who may take part in debate, but have no vote.

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It is submitted also, that the very kind and class of bills, namely, special legislation, which ought to be most closely scrutinized and unhesitatingly repressed by any board or council of revision, is the kind of legislation which the members or officers of the Legislature who introduce the same, would endeavor to slip through to a final passage, without the examination and criticism of an independent board or council acting solely in the interest of the whole people of the State. For these reasons the directory and permissive provisions of the Statute of 1893 should be amended so as to peremptorily require that every bill, at some time after its introduction and before its final passage, should be submitted to the Commissioners of Statutory Revision, whose number and pay should be increased sufficiently to insure a strong and efficient board; or, that a separate board or council of revision should be created and placed upon a practical, permanent and substantial basis, so that any of our best lawyers could afford to accept a position as member of such board, and perform his duties to the exclusion of all other private business during the session of the Legislature, and for such time thereafter as might be necessary.

In point of fact, the State of Maine, at that time, had simply an outstanding legislative commission charged with the duty of making recommendations relative to the enactment of special laws. The report of that commission makes no reference to the question now under consideration.

In South Carolina, by the Revised Statutes of 1894, section 21, the solicitors of the various circuits are required to attend during the sessions of the Legislature and draft bills for the members when desired, and some solicitor must certify upon each Act, before it is ratified, that it is correctly enrolled.

In Connecticut, joint rules of the two houses provide:

It shall be the duty of the Clerk of Bills to examine all bills for public acts and resolutions in respect to their form, before the same are reported favorably by the committee to whom they have been referred, and to endorse thereon the fact of such examination, and under the direction of such committee to prepare such amendments or substitute bills or resolutions as may be deemed necessary or advisable, and he shall supervise the printing of bills and resolutions in accordance with the provisions of section 412 of the General Statutes, and Rules XII and XIII. Whenever a bill or resolution, not bearing the endorsement herein required, shall be reported for printing, the Clerk of the Senate or House, as the case may be, shall immediately transmit the same to the Clerk of Bills for examination and endorsement.

And to these may be added the fact that by long continued practice in Delaware, and perhaps in other States, members of the legislature may employ counsel to prepare bills, the expense thereof being paid by the State, if the Legislature thinks the subject-matter of the bills of sufficient importance to justify it.

In further pursuance of the attempt in New York to reform legislative procedure, the governor under the authority of chapter 1025, of the Laws of 1895, appointed a commission of five members to "investigate in relation to the organization and government of the Legislature, the introduction and progression of bills, and generally in relation to legislative business and methods." This Commission made a report to the Governor on November 30, 1895, in which they said

that to secure better legislation in the future it is necessary to methodize and improve legislation in the following particulars :

*First.*—That all private and local bills, including bills which relate to municipalities, shall be filed either before the beginning of the legislative session or within thirty days before their presentation to the Legislature, unless the Governor of the State takes upon himself the responsibility of making a special recommendation of urgency ; and that each bill shall be accompanied with proof that a notice was duly published or personally served, or both, as the circumstances of the case may require, on every interest which may be affected by such legislation.

*Second.*— That the petition for such legislation shall set forth its general scope, object and utility. This petition may be answered in writing by any adverse interest. Such petition and one or more answers which partake of the nature of pleadings in a civil suit, shall be filed with the bill, and these petitions and counter-petitions, duly signed, shall accompany each bill of this character during the whole of its legislative progression.

*Third.*—That Committees of Revision, both Senate and Assembly, should have their powers enlarged for the consideration of all measures, both public and private and local, and that each of these committees shall be assisted in its labors by a lawyer of at least ten years' standing, with an adequate salary to insure proper talent, who shall have such assistance as may be necessary. These committees to act as advisory committees for redrafting bills, and for recommendations as to their effect, with suggestions as to their operation upon the general body of the law, and to point out constitutional or other defects. Such counsel to be appointed by the Governor, Lieutenant-Governor and the Speaker of the House, for a fixed term.

*Fourth.*—That a day calendar shall be printed one day in advance and distributed among the members.

*Fifth.*—That general public measures should be referred before passage to the Commissioners to Revise the Statutes, to report upon the effect of such measures and their place in the body of the statute law.

*Sixth.*—That committees of the Legislature should be empowered to take testimony.

*Seventh.*—That every committee should be required to report the private and local bills which have been submitted to it, with the reasons for its action, within a certain number of days after the bill has been committed to its care.

*Eighth.*—That some of the Senate Committees should be enlarged, particularly such committees as have imposed upon them the most onerous duties of the legislative session, such as the Committee on Cities, the Committee on Finance, the Committee on Judiciary.

*Ninth.*—That a proportionate share of the printing expenses incident to a legislative session, which amounted, during the last session, to the sum of \$200,000, should be borne by the parties interested in the bills, and in whose interest and at whose request legislation is considered, particularly moneyed corporations, stock corporations or private individuals.

*Tenth.*—That the general laws should be completed as rapidly as possible, and all public statutes should be incorporated into them or into one of the codes.

*Eleventh.*—That all bills amendatory of the general laws, or of the Code, should refer briefly in their title to the general subject to which they relate.

*Twelfth.*—That all amendments to City Charters or to the general municipal incorporation laws should briefly state in the title the subject of the sections of the statute which are proposed to be amended.

*Thirteenth.*—That with reference to every bill affecting any department of the State Government, or the general administration of the law subject to the supervision of such department, notice thereof shall be given to the head of the department having the administration of such subject under his supervision, and an opportunity afforded him to be heard before the bill is reported or passed.

Some of the matters thus deemed essential are already provided for in this State by Article 3, Sec. 8, of the Constitution, and the Act of 12th February, 1874, P. L. 43, passed to carry out its provisions; some are already in force by the rules of the respective houses; many are attempts to introduce a system analagous to that in the English Parliament as hereinbefore referred to; and most of them are beyond the scope of the inquiry referred to your committee. It will hardly be disputed but that they are, generally speaking, wise suggestions; but, unfortunately, they help us but little at this time.

In England and her colonies the methods of legislation are so essentially different from ours, and so repugnant in some respects to the genius of our institutions, that we are little helped thereby. The ministry is practically responsible for all legislation of every kind enacted by Parliament. On the second reading of every bill, public or private, some member of the ministry announces that the ministry support it, or oppose it, or stand neutral (Bryce's "American Commonwealth," chapter XVI). The result is that every bill must pass the inspection of trained legislative draughtsmen, whose primary purpose is, however, to benefit the ministry, every other purpose being subservient to that. This system has been justly characterized as "the great modern paradox of the British Constitution" (Sir Henry Maine in "Popular Government," page 236). It is not believed that such a method is desirable here, though it must be admitted that it practically excludes carelessly-worded legislation.

Your committee were, therefore, compelled themselves to formulate a bill to remedy this serious evil, a draft of which is hereto appended. They are well aware that as to some of its provisions much can be said in favor of changes therein. For instance, from an ideal standpoint, it would be wiser to have a report upon each bill submitted before any action was taken by the proper committee, but as the number of bills that are stillborn are so great, the labor of the Legislative Commissioners would be very greatly and unnecessarily increased.

It is believed by your committee also that while the State would be put to a not inconsiderable expense by the proposed bill, that the benefits accruing would many times repay that expense.

The attention of your committee was also called to the numerous disputes which had arisen on the subject of procedure, on appeals to the Supreme and Superior Courts, partially due to the different systems provided for those courts, and partially due to the inadequacy of and incongruity in the fragments embodying the law relating thereto.

An Act to furnish a complete system in itself was thereupon drafted and carefully gone over by your committee. Courtesy to the judges of the Supreme and Superior Courts, as well as a desire to obtain the benefit of their special knowledge on the subject, required that copies of the proposed Act should be sent to them. This was done, and finally resulted in a consultation between the chairman of your committee and all fourteen of the judges of those courts, in which the proposed Act was gone over, section by section, and, with some modifications, approved by all of them. The result of that consultation, with slight changes, appears in the Act hereto appended. The modifications suggested by the judges were accepted by your committee, and only one of them, viz.: that requiring a writ in the nature of a writ of *certiorari* to be issued by the appellate court, and filed in the court below, in order to perfect the appeal, was to any extent, a change in the Act as originally drafted. All of the judges were clear that such a change was essential, and those of the Superior Court, and the prothonotaries of that court, gave a number of instances in which embarrassment was caused for want of such a provision in the Superior Court Act. It often happens, under the Superior Court Act, that difficulty arises by reason of a rule to quash the appeal, or some other action taken in the appellate court, prior to the time when usually the record would be returned. By requiring a writ to be issued and filed, that difficulty will not arise.

One provision in this Act is a somewhat radical departure from the present system, and is probably the only one that will provoke opposition. It is the clause making the cost of printing paper books in the appellate court part of the costs of the cause. Prior to the order of the Supreme Court made April 22, 1848, and printed in 16 Pa. St., page 7, there was no requirement that paper books should be printed. That the change was needed will be readily admitted by any one who will take the trouble to examine the record in any unprinted case prior to that date. But whether needed or not, it would be practically impossible

now to keep up with the business of the appellate courts except by the use of printed paper books. No Act on the subject of costs in that court has been passed since the date of that order, and the question, unembarrassed by any previous legislative expression, therefore resolves itself into this: Given the fact that paper books must be printed, who should bear the cost thereof, the party ultimately losing the case, and, therefore, presumptively in the wrong, or the successful party, who is presumptively right? It will not do to say that the presumption is sometimes not consonant with the fact. This is indeed true, but it is the fault inhering in all things human, and is a quarrel with our system of jurisprudence, and not with this provision of the Act. Let him who indulges in that quarrel change the system, if he can; but while we have the system let us at least be logical, and say that he who is legally right shall not, at the option of his opponent, be punished by rule of court while he is proving that he is right. This argument would, of course, apply also to the question of necessary counsel fees, of which the three dollars charge is a travesty, but the litigant, in the eye of the law, may be his own counsel, and though, perhaps, he would have a "fool for his client" still *qui facit per alium facit per se*. In equitable matters this item of cost, like all others, will be charged as the court, in its discretion, shall direct.

With this Association and the Supreme Court and Superior Court at the back of the Act, its passage should be reasonably certain.

Your committee also drafted an Act on the subject of the return day of writs, which they feel is needed. A fixed, definite return day may be said to have been a necessity when the court was peripatetic, and the Bar rode on circuit; but that day has long since passed. Except in our courts of last resort the peripatetic feature is practically a thing of the past. It is true that in some judicial districts there are still two or three counties to be presided over by but one judge, but the time necessitated in traveling from the remotest law office in

the district to any court is but the fraction of a day, and in this age of steam and lightning no reason appears why, because thereof, we should carry on the law business according to stage-coach methods. We have developed a sensible system on the subject of the lien of judgments and executions, and of the necessity for diligence in regard to the latter. Why, then, should we not give that diligence full scope, and say to the lawyer who issues his writ a day after the return-day, you shall not be put in the position of a derelict, compelled to wait for weeks unnecessarily, because in the ancient days there was a necessity for a fixed return day?

So long as summary judgments could only be taken at a given time, and in open court, the change now sought would help but little. But who to-day would return to the scramble of "judgment-day," with its opportunities for favoritism, and consequent precedence of execution? Or, who would care to stand the delays and annoyances of waiting for the formal entry of judgment by the court, when the prothonotary can enter it just as well, and without those delays and annoyances? How vexatious that system was is evidenced by the means taken by the various courts to get away from its possibilities of injustice; perhaps the most efficacious being that adopted in the 21st Judicial District which required the prothonotary to retain all *fi fas* issued on "judgment day," and to hand them together to the sheriff at 4 P. M. on that day.

With the passage of the Procedure Act (25th May, 1887, P. L. 271), and the Act authorizing the prothonotary to enter summary judgments, with the same effect as if entered in court (22d April, 1889, P. L. 41) the last vestige of a reason for the present system passed away.

*Cessante ratione legis cessat et ipsa lex.*

By the Act of 5th April, 1862, P. L. 270, Chester County has had a system substantially like the one herewith presented, and that Bar is unanimous in the statement that under no circumstances would they return to the system now in vogue in the rest of the State. It seems marvellous that



the beneficial effect of that system should have been known for over a third of a century, and yet the rest of the State be unrelieved.

Since the new Equity Rules just that system is applied in all proceedings in equity—generally the most important of litigation—and no valid objection can be given why the practice should not be uniform. If the change suggested were made, the appearance would have to be entered, in law and equity alike, in fifteen days after service; and the affidavit of defence at law, and the answer in equity, would alike have to be filed in fifteen days after service of a copy of the cause of action or complaint.

Your committee, through its chairman, has also prepared a compilation of the rules of all the courts of common pleas throughout the State, which will appear in the Appendix to the report of this meeting.

ALEX. SIMPSON, JR.

*Chairman.*

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**PROPOSED ACTS REFERRED TO IN REPORT OF  
COMMITTEE**

**AN ACT**

**REGULATING THE PRACTICE, BAIL, COSTS AND FEES ON  
APPEALS TO THE SUPREME COURT  
AND SUPERIOR COURT.**

**BE IT ENACTED, ETC.**

SECTION 1. In every case in which an appeal is taken to the Supreme Court or Superior Court, such appeal shall be entered in the court to which the appeal is taken, and filed with the same shall be an affidavit of the parties appellant, or some one of them, or of one of their chief officers, or of their agent or attorney, that said appeal is not taken for the purpose of delay, but because appellants believe they have suffered injustice by the sentence, order, judgment or

decree from which they appeal. Such affidavit may be made before any one authorized to administer oaths.

SEC. 2. When an appeal has been entered, the prothonotary of the appellate court shall issue a writ in the nature of a writ of *certiorari*, directed to the court from which the appeal is taken, requiring said court to send to the appellate court for review the record in the cause or matter wherein is entered the sentence, order, judgment or decree appealed from, on or before the Saturday prior to the first day of the week fixed by the appellate court for the argument of said appeal; and no appeal shall be considered perfected until such writ be filed in the court below. The appellate court may, by rule or special order, without prior notice to the court below, require said record to be prepared, certified and forwarded by the court below, at an earlier date than that mentioned in the writ, whenever the record may be needed in any matter connected with said appeal. The prothonotary or clerk shall prepare and forward the record to the appellate court, duly certified by any judge of the court below, on or before the date mentioned in said writ, or in such rule or special order.

SEC. 3. At the time of filing the appeal the prothonotary of the appellate court shall be paid the sum of twelve dollars, which shall be in full for all his services upon any appeal taken thereto, including the preparation of and certifying the remittitur and record to the court below, with a copy of the opinion in all cases, or for preparing and certifying the record to the Supreme Court in case of an appeal thereto from the Superior Court. No state tax shall be allowed on any appeal to the Supreme Court or Superior Court, or on any writ or process of either of said courts.

SEC. 4. No appeal shall be allowed in any case unless taken within six calendar months from the entry of the sentence, order, judgment or decree appealed from; nor shall an appeal supersede an execution issued, or distribution ordered, unless taken and perfected and bail entered in the manner

herein prescribed within three weeks from such entry. An appeal from the Superior Court to the Supreme Court must be taken and perfected within three calendar months from the entry of the order, judgment or decree of the Superior Court. Appeals taken after the times herein provided for shall be quashed on motion.

SEC. 5. Bail upon any appeal shall be entered in the court from which the appeal is taken, shall be in the name of the Commonwealth to the use of all parties interested, and shall be sued upon in like manner as official bonds. Except as herein otherwise provided, and subject to revision by the court from which the appeal is taken, the prothonotary or clerk thereof shall fix the amount of bail, and approve or reject the security offered. For all services in connection with any appeal he shall receive the sum of three dollars.

SEC. 6. An appeal from an order, judgment or decree directing the payment of money, shall operate as a supersedeas, if the appellant gives bond in double the amount of said order, judgment or decree, and all costs accrued, and likely to accrue, conditioned that the appeal be prosecuted with effect, and that the appellant will pay all costs and damages awarded by the appellate court, or legally chargeable against him.

SEC. 7. An appeal from an order or decree directing the assignment or delivery of any kind of personal property, shall operate as a supersedeas if the appellant brings the article required to be assigned or delivered into the court below, and gives bond in double the amount of all costs accrued, and likely to accrue; or gives bond in at least double the value thereof as found by said court, and the amount of said costs; and conditioned in either event, that the appeal be prosecuted with effect, that the appellant will abide by and obey the order or decree of the appellate court, and will pay all costs and damages awarded by the appellate court, or legally chargeable against him.

SEC. 8. An appeal from an order or decree directing the execution of any conveyance or other instrument by any party, shall operate as a supersedeas, if the appellant executes the conveyance or instrument directed and deposits the same in the court below, and gives bond in double the amount of costs accrued or likely to accrue, conditioned that the appeal be prosecuted with effect, that the appellant will abide by and obey the order or decree of the appellate court, and will pay all costs and damages awarded by the appellate court, or legally chargeable against him.

SEC. 9. An appeal from an order or decree granting an injunction, or relief in the nature thereof, shall operate as a supersedeas, if the appellant gives bond in such sum as the court below shall direct, conditioned that the appeal be prosecuted with effect, that the appellant will pay all costs accrued and likely to accrue, and will pay all damages and injuries suffered by appellees, from the time of decree entered until final compliance with the order or decree entered on the appeal; but the court below may, notwithstanding the appeal, make such order or decree as may be necessary to preserve the *status quo* pending the determination of the appeal.

SEC. 10. An appeal in an action of ejectment, or other action involving the title to or possession of real property, when the judgment below is against the party in possession, shall operate as a supersedeas, if the appellant gives bond in double the sum he will probably have to pay in case the judgment be affirmed, conditioned that the appeal be prosecuted with effect, that the appellant will not commit or suffer to be committed, any waste on the property in dispute, that he will pay whatever mesne profits accruing after the judgment shall be thereafter recovered against him, and all costs and damages awarded by the appellate court, or legally chargeable against him.

SEC. 11. An appeal from an order or decree dismissing or removing any person acting in any fiduciary capacity whatsoever, shall operate as a supersedeas if the appellant

deposits in the court below all the assets of the estate, as found by the court below are or should be in his hands, and gives bond in double the amount of costs accrued and likely to accrue; or gives bond in at least double the total undeposited assets of the estate, as determined by the court below, and all said costs; and conditioned in either event that the appeal be prosecuted with effect, and that the appellant will pay such sum as shall be found to be due the estate by such fiduciary, and all costs and damages awarded by the appellate court, or legally chargeable against him.

SEC. 12. In appeals from judgments and decrees in mandamus, quo warranto, contested election cases, from sentences in criminal proceedings, and all other classes of cases not herein otherwise provided for, the appeal shall not operate as a supersedeas unless so ordered by the court below, or the appellate court, or any judge thereof, either by general rule or special order, and upon such terms as may be required by the court or judge granting the order of supersedeas.

SEC. 13. An appeal from an order, judgment or decree for costs only, shall operate as a supersedeas if the appellant gives bond in double the amount of all costs accrued and likely to accrue, conditioned that the appeal be prosecuted with effect, and that the appellant will pay all costs and damages awarded by the appellate court, or legally chargeable against him.

SEC. 14. An appeal from an order, judgment or decree which comes within more than one of the classes of cases above referred to, shall not operate as a supersedeas, unless the bond be in such amount, and with such conditions, as shall adequately secure the appellees in accordance with the provisions made for all the classes within which the order, judgment or decree comes.

SEC. 15. Appeals may be taken from any sentence, order, judgment or decree, without security, in any proceeding where by law the same is or may be allowed, but in such cases the appeal shall not operate as a supersedeas, except when a

county, township or municipal corporation, or any one suing or defending in a representative capacity, is the appellant; and except also that where a corporation, other than a county, township or municipal corporation, appeals on its own behalf, such appeal shall be quashed unless bail is given to operate as a supersedeas, as herein provided.

SEC. 16. Nothing herein contained shall operate to hinder the court below, in its discretion, from directing and enforcing the sale of any property that may be perishable, notwithstanding an appeal, the fund realized to be brought into court pending the appeal; nor to hinder the court below from proceeding with the cause appealed from in anything not affected by the subject-matter of the appeal. Nor shall an appeal postpone payment in accordance with the final confirmation of any account, adjudication, distribution, report, or award of damages by a jury of view, except to the extent necessary to preserve the rights of the appellant, unless specially so ordered by the court below, or by any judge thereof.

SEC. 17. The court from which an appeal is taken may make such orders as to right and justice shall belong, relative to the security offered or entered, either as to approval thereof, addition thereto, or substitution therefor, whenever a proper case shall be made to appear requiring the action of said court.

SEC. 18. Writs may be issued out of the Supreme Court or Superior Court, as heretofore, if the court below fails or neglects to certify or send the whole record in the cause, or when the record has been returned to the lower court and is needed for further proceedings in the appellate court. For all services in connection with said writs, or with any other special writs issued in appealed cases, the prothonotary of the appellate court shall be paid at the time the writ is issued the sum of three dollars, which shall, in the discretion of the appellate court, be ultimately paid by the party suing out the writ, or as costs in the cause. A like sum shall be

paid the prothonotary of the Supreme Court on filing a petition for the allowance of an appeal from the Superior Court, but it shall, however, form part of the prothonotary's costs on the appeal, if the petition is granted.

SEC. 19. No additional bail bond shall be required on appeals from the Superior Court to the Supreme Court, unless upon application of a party in interest it shall be made to appear to the Supreme Court that the bail entered is, from any cause, insufficient, in which event the Supreme Court, may require additional bail to be entered in the court from which the appeal was first taken, and in default of the entry thereof, within the time specified, may order a non-pros; or in case the order, judgment or decree of the court below is reversed by the Superior Court, and final judgment entered for the appellant, in which event in order to operate as a supersedeas, an appeal bond must be entered in the court from which the appeal was first taken, in such amount and with such conditions as are required in cases of appeals from similar orders, judgments or decrees of such lower court.

SEC. 20. At the expiration of ten days from the final decision of any cause by the Supreme Court or Superior Court, the prothonotary thereof shall send back the record with a remittitur, and a copy of the opinion, to the court from which it originally came, unless other steps be taken in the cause which shall require its detention. It shall not be necessary to return the record to the Superior Court in any case appealed therefrom, unless the Supreme Court shall so direct, but it shall be remitted to the court from which it originally came, in the same manner, and with like effect, as if directly appealed to the Supreme Court therefrom.

SEC. 21. The costs in any appealed cause shall consist of the amount paid the prothonotary or clerk of the court below and of the appellate courts, an attorney fee of ten dollars in each court to which an appeal is taken, and the necessary expense of printing paper books therein, not exceeding seventy-five cents per page. Such costs shall be paid by

the party finally losing the cause, except as herein otherwise provided, and in equitable proceedings where the court shall otherwise direct. In all cases where the appellate court shall be of opinion that the appeal was sued out merely for delay, it shall award as further costs an additional attorney fee of twenty-five dollars, and damages at the rate of six per centum per annum, in addition to legal interest.

SECTION 22. The following Acts of Assembly and parts of Acts, viz.:

Section 14 of the Act of 22d May, 1722, entitled "An Act for establishing Courts of Judicature in this Province," 1 Sm. Laws, 131 ;

Section 20 of the Act of 13th April, 1791, entitled "An Act to establish the judicial courts of this Commonwealth in conformity to the alterations and amendments in the Constitution," 3 Sm. Laws, 28 ;

Section 7 of the Act of 11th March, 1809, entitled "A further Supplement to an Act entitled 'An Act to alter the judiciary system of this Commonwealth,'" 5 Sm. Laws, 15 ; and so much of Section 6 of said Act as provides for appeals and writs of error, and the affidavit required thereto ;

Section 4 of the Act of 22d March, 1817, entitled "An Act relative to suits brought by or against corporations," 6 Sm. Laws, 438 ;

The Act of 8th February, 1819, entitled "An Act to limit the time of appeal in cases of divorce, and of the settlement of the accounts of guardians, executors and administrators," 7 Sm. Laws, 151 ;

So much of Section 1 of the Act of 6th April, 1830, entitled "An Act for the levy and collection of taxes upon proceedings in court, and in the offices of register and recorder, and for other purposes," P. L., 272, as provides as follows: "The prothonotary of the Supreme Court, exercising appellate jurisdiction, shall demand and receive on every writ of error issued or appeal entered by him, the sum of three dollars and fifty cents ;"



The first proviso to Section 59 of the Act of 29th March, 1832, entitled "An Act relating to Orphans' Courts," P. L., 190 ;

Section 3 of the Act of 11th June, 1832, entitled "A Supplement to an Act entitled 'An Act concerning the administration of justice,'" P. L., 611 ;

So much of Section 2 of the Act of 27th March, 1833, entitled "An Act to facilitate appeals by guardians, from the judgments of justices of the peace, and from awards of arbitrators, and for other purposes," P. L., 99, as relates to appeals to the Supreme Court ;

The Act of 11th March, 1834, entitled "A further Supplement to the 'Act to alter the judiciary system of this Commonwealth,'" P. L., 125 ;

Sections 7, 8 and 91 of the Act of 16th June, 1836, entitled "An Act relating to executions," P. L., 755 ;

Section 11 of the Act of 16th June, 1836, entitled "An Act relating to the jurisdiction and powers of courts," P. L., 784 ; and so much of Section 7 of said Act as relates to writs of error ;

So much of Section 10 of the Act of 13th June, 1840, entitled "A further Supplement to an Act entitled 'An Act providing for the election of aldermen and justices of the peace,' passed 21st June, 1839, and for other purposes," P. L., 689, as relates to appeals and writs of error to the Supreme Court ;

Sections 1 and 2 of the Act of 17th March, 1845, entitled "An Act to allow and regulate appeals to the Supreme Court for the Eastern District of Pennsylvania, from the decrees in Equity of the Court of Common Pleas of the county of Philadelphia," P. L., 158 ;

So much of Section 3 of the Act of 21st April, 1846, entitled "An Act in relation to certain public officers and their sureties," P. L., 432, as relates to the manner and terms upon which an appeal is to be allowed ;

Section 1 of the Act of 15th March, 1847, entitled "An Act to require corporations to give bail in certain cases, and

relative to the commencement of suits against foreign corporations, to the accounts of John Sloan, late treasurer of Lycoming County, and Pittsburgh and Connellsville Railroad Company," P. L., 361 ;

So much of Section 3 of the Act of 21st March, 1849, entitled " An Act to facilitate the collection of debts against corporations," P. L., 216, as relates to appeals and writs of error ;

Section 29 of the Act of 25th April, 1850, entitled " An Act relating to the bail of executrixes ; to partition in the Orphans' Court and Common Pleas ; to colored convicts in Philadelphia," etc., P. L., 569, and the proviso to Section 25 thereof ;

So much of Section 1 of the Act of 14th February, 1857, entitled " An Act granting equity powers and jurisdictions to Courts of Common Pleas," P. L., 39, as relates to the manner, terms and conditions provided for taking an appeal ;

Section 59 of the Act of 31st March, 1860, entitled " An Act to consolidate, revise and amend the laws of this Commonwealth relating to penal proceedings and pleadings," P. L. 427, and the proviso to Section 33 of said Act ;

The proviso to Section 1 of the Act of 16th March, 1868, entitled " An Act to authorize writs of error to the judgments of the courts of quarter sessions on appeals from the orders of removal of paupers," P. L. 46 ;

The Act of 1st April, 1874, entitled " A supplement to ' An Act to establish the judicial courts of this Commonwealth in conformity to the alterations and amendments in the Constitution,' passed 13th April, 1791, limiting the time for taking writs of error, appeal and *certiorari* to the Supreme Court," P. L. 50 ;

Section 8 of the Act of 19th May, 1874, entitled " An Act relating to the organization and jurisdiction of the Orphans' Court, and to establish a separate Orphans' Court," etc., etc., P. L. 206 ;

So much of the Act of 19th May, 1874, entitled " An Act to provide for review in the Supreme Court in criminal

cases," (P. L. 219) as requires the allowance of an appeal by the Supreme Court, or one of the judges thereof, in order to stay or delay execution of the sentence or judgment, or for an appeal by the Commonwealth in cases of nuisance, forcible entry and detainer, or forcible detainer,

The Act of 25th May, 1874, entitled "An Act to regulate damages pending a writ of error, and the costs accruing thereon," P. L. 227 ;

The Act of 24th March, 1877, entitled "An Act to prevent delay in the review of capital offences in the Supreme Court," P. L. 40 ;

The proviso to Section 1 of the Act of 4th April, 1877, entitled "An Act providing for appeals from the court of common pleas in cases of applications for opening of judgments entered on warrants of attorney," P. L. 53 ;

So much of the Act of 11th June, 1891, entitled "An Act allowing and providing the manner of taking appeals in case of divorce," P. L. 295, as provides for the recognizance and affidavit on an appeal ;

So much of Section 4 of the Act of 24th June, 1895, entitled "An Act to establish an intermediate court of appeal ; regulating its constitution, officers, jurisdiction, power, practice, and its relation to the Supreme Court," etc., etc., P. L. 212, as relates to the compensation of the prothonotaries of said Court ; so much of Section 7, clauses (a) and (b), as requires the allowance of an appeal by one of the judges of the Superior Court in cases appealed from the Court of Quarter Sessions of the Peace and Court of Oyer and Terminer and General Jail Delivery ; paragraphs 2, 3, 4, 5, 6 and 7 of Section 8 of said Act ; and paragraphs 1 and 2 of Section 9 of said Act ;

And all other Acts and parts of Acts, general, special or local, appertaining to the subject-matter covered by this Act, be and the same are hereby repealed ; it being intended that this Act shall apply to all appeals to the Supreme Court or Superior Court in any and every proceeding, and from any court whatsoever, and shall furnish a complete and

exclusive system in itself on all appeals to such appellate courts. But the power of said appellate courts, except in regard to the matters herein expressly provided for, shall remain unaffected hereby.

SECTION 23. This Act shall go into effect July 1st, 1897, and shall apply to cases then pending; but the limitation of time herein provided for, as against any party entitled to appeal from a sentence, order, judgment or decree theretofore entered, shall not begin to run until that date, if, but for this Act, the right of appeal would have extended, after that date, beyond the times herein prescribed.

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## AN ACT

PROVIDING FOR THE APPOINTMENT AND PAYMENT OF  
LEGISLATIVE COMMISSIONERS, PRESCRIBING THEIR  
DUTIES, AND THE DUTIES OF THE LEGISLA-  
TURE IN REFERENCE TO PRO-  
POSED LEGISLATION.

BE IT ENACTED, ETC.

SECTION 1. The Governor by and with the advice and consent of the Senate shall appoint as Legislative Commissioners three persons, who shall possess all the qualifications necessary for justices of the Supreme Court. One of said persons shall be commissioned to serve for four years, one for seven years, and one for ten years, if they shall so long behave themselves well. Vacancies shall be filled by appointment to serve for the full term of ten years.

SEC. 2. Said Commissioners shall serve from the first day of December prior to any regular session of the Legislature, until the adjournment thereof, and shall receive as compensation for their services the sum of seven hundred and fifty dollars per month for each month and part thereof during said periods. Each Commissioner shall be entitled to a sum not exceeding one hundred dollars per month for clerical service during said period.

SEC. 3. Any member or member-elect of either House may, on or after the first of December prior to any regular legislative session, and during the legislative session, require of said Legislative Commissioners assistance in the redrafting of any proposed bill, except Appropriation or Apportionment Bills, upon written request, stating the purpose of the intended legislation and the remedies sought thereby. And said Commissioners, upon receipt of written notice from any member or member-elect, and of a copy of the proposed bill, shall prepare, as far as may be, prior to the meeting of the Legislature, the report upon such proposed bill, in the manner hereinafter set forth, which report shall be introduced with and thereafter accompany said proposed bill to final passage in both Houses.

SEC. 4. All bills unaccompanied by such report of said Commissioners, except Appropriation or Apportionment Bills, presented by any Senator or Representative, shall, if the subject-matter thereof be acted upon favorably by the appropriate committee, or if the bill be directed to be placed on the Calendar, be at once referred to said Legislative Commissioners for report thereon as hereinafter set forth.

SEC. 5. Said Commissioners shall forthwith, upon the reference to them of any proposed bill, make a report thereon to the body from which the bill was received, which report shall contain :

1. A concise statement of the existing law, if any, and the change proposed.
2. A reference to similar legislation, if any, pending before the Legislature.
3. Suggested amendments of substance and the reasons therefor.
4. Suggested amendments of language and the reasons therefor.
5. Whether Constitutional and Statutory requirements, if any, have been complied with.

SEC. 6. Every bill so reported upon shall have attached thereto the report of said Legislative Commissioners in regard to said bill, and a printed copy of such report shall be given with the bill to each member of each House during its passage through either House. And said Commissioners shall keep and file in their office a copy of each bill and of their report thereon.

SEC. 7. Said Commissioners shall also make report in the manner aforesaid upon any proposed legislation, except Appropriation or Apportionment Bills, whenever requested, by either branch of the Legislature or by any committee thereof.

SEC. 8. After the final passage of any bill and before it is signed by the presiding officer of either House, printed copies thereof shall be furnished to said Commissioners, who shall promptly examine the same for defects therein of form merely, and shall report any suggestions regarding the correction of such defects, and after such report shall have been received and acted upon a printed copy of the bill as finally passed and so corrected, if any correction is made, shall be signed by the proper presiding officers and forwarded, with the report or reports of the Commissioners thereon, to the Governor in the place and stead of engrossed bills as heretofore.

SEC. 9. Said Legislative Commissioners shall be appointed forthwith, but shall not enter upon the performance of their duties during the present session of the Legislature.

SEC. 10. All Acts or parts of Acts inconsistent herewith are hereby repealed.

## AN ACT

REGULATING THE FORM, SERVICE AND RETURN OF PROCESS  
IN ACTIONS OF SUMMONS, SCIRE FACIAS, ATTACH-  
MENT AND CAPIAS AD RESPONDENDUM.

BE IT ENACTED, ETC.:

SECTION 1. That all writs of summons, scire facias, attachment and capias ad respondendum, issued out of any Court of Common Pleas in this Commonwealth, may be served at any time within three months from the date thereof, and shall be made returnable at the expiration of fifteen days from the service thereof, except as herein otherwise provided; but the return of an inability to serve may be made when requested by plaintiff at any time after the issuing thereof, in which event the return day shall be the thirtieth day after the writ was issued.

SEC. 2. No alias or pluries writ shall be issued until after the return day of the immediately preceding writ.

SEC. 3. In all cases where posting or publication is required, such writ shall be posted and published at once, and the return day shall be fifteen days after the date of such posting or of the last publication.

SEC. 4. All such writs shall be directed to the parties defendant therein, shall notify and require them to enter a written appearance, either personally or by counsel, in the prothonotary's office of said court within the time herein provided, and shall state that a failure to enter an appearance within said time may result in a judgment by default being entered against them in their absence. All writs of scire facias shall, in addition thereto, notify and require the parties defendant therein to file their affidavit of defence, if any they have, in said office within said time, and shall state that a failure so to do may result in a judgment by default being entered against them in their absence.

SEC. 5. All such writs shall be served, posted or pub-

lished and returned by the sheriff at once, in accordance with existing laws as herein modified. The return to such as shall be served shall show the date of service thereof, and the return to such as shall be posted or published shall show the date of such posting or of the last publication.

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THE PRESIDENT: The report is now before the meeting; what action shall be taken? Do you prefer to take up the recommendation as to each bill separately?

MR. RHOADS, Philadelphia: Is not this afternoon fixed for the discussion of these reports?

MR. SIMPSON, Philadelphia: In the programme, you will find a provision for the discussion of proposed legislation this afternoon. This session has now reached such a stage that to enter into any discussion would carry us beyond the dinner hour; and I would suggest, if I may be permitted to do so, that the report lie over till the afternoon session.

THE PRESIDENT: This matter came before the Executive Committee, and it was thought the subject of each report had better be dealt with separately. I also wish to announce that Mr. Parker, who will deliver the Annual Address, cannot be here in time to deliver the address this evening, and the Executive Committee has agreed that the address be delivered to-morrow morning.

MR. READING, Lycoming: I move the consideration of this report be deferred until the afternoon session.

Seconded and agreed to.

THE PRESIDENT: Is it the pleasure of the Meeting to proceed with the reading of any other report?

MR. ANDREW KAUFFMAN, Lancaster: I desire at this time to offer for adoption this resolution:

*Resolved*, That a committee of seven be appointed to report to-morrow morning suggestions for nominations for the Executive Committee and Vice-Presidents; the committee to post a notice of their meeting, so that an opportunity may be had for any member to make suggestions.



I move its adoption with the request that not only I be not appointed Chairman, but that I may not be put upon the committee at all.

Seconded and agreed to.

MR. COLAHAN, Philadelphia: I move we now take a recess until three o'clock.

Seconded and agreed to.

Adjourned.

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## AFTERNOON SESSION

July 8, 1896

The Association re-convened at 3 o'clock P. M., President Dickson in the chair.

THE PRESIDENT: In pursuance of the resolution adopted just before the close of the last meeting, the Chair has appointed as a committee to recommend nominations, Hon. Martin E. Bell of Blair, Charles H. Bergner of Dauphin, George B. Gordon of Allegheny, Thomas A. Murray of Clearfield, Isaac Hiester of Berks, W. H. Playford of Fayette, and T. Elliott Patterson of Philadelphia.

I am also requested to give notice that all of the members present, who have not yet done so, are desired to register, so that we may have a complete list of all those present; the slips are to be found at the office of the hotel.

Gentlemen, the report of the Committee on Law Reform is now before the Association; what is the pleasure of the meeting? Will you proceed to its discussion?

MR. LAIRD, Beaver: Mr. Chairman, as I understand, the discussion is to go over until to-morrow, under the programme. I move you, therefore, that the report be received.

MR. HARGEST, Dauphin: Do I understand, Mr. President, that the carrying of this motion, and the reception of the report, would imply the approval by the Association of the legislation recommended?

**THE PRESIDENT :** I should suppose so. I should think it might be desirable for some one to offer a resolution recommending the adoption of each of the bills separately, and then the discussion could come upon each bill. Would that be satisfactory to the chairman of the committee?

**MR. SIMPSON, Philadelphia (Chairman Committee on Law Reform) :** Entirely so. I think that is the better way to do it.

**THE PRESIDENT :** The first bill is the one regulating the practice on appeal ; will some one move that the passage of that Act be recommended ? (For text of Act see page 62.)

**MR. SIMPSON, Philadelphia :** Before any action is taken on that matter, the committee have made two or three amendments to the draft of the proposed bill, and if the members of the Association will take the printed copies in their hands, I will call attention to the amendments suggested by the committee. Most of them are simply amendments to make the language clearer. In the fifth line of Section 1, the committee suggests an amendment, so that the section shall read "and filed with the same shall be an affidavit of the parties appellant or some one of them, or one of their chief officers or of their agent or attorney," and so on. The language of the section left some doubt as to the method in case a corporation is appellant. So that the section shall read as follows :

**SECTION 1.** In every case in which an appeal is taken to the Supreme Court or Superior Court, such appeal shall be entered in the court to which the appeal is taken, and filed with the same shall be an affidavit of the parties appellant or some of them, or one of their chief officers, or of their agent or attorney, that said appeal is not taken for the purpose of delay, but because appellants believe they have suffered injustice by the sentence, order, judgment or decree from which they appeal. Such affidavit may be made before any one authorized to administer oaths.

In Section 4, after the words "execution issued," the committee suggest that the words "or distribution ordered" be inserted. The section then will read as follows :

**SEC. 4.** No appeal shall be allowed in any case unless taken

within six calendar months from the entry of the sentence, order, judgment or decree appealed from; nor shall an appeal supersede an execution issued or distribution ordered, unless taken and perfected and bail entered in the manner herein prescribed within three weeks from such entry. An appeal from the Superior Court to the Supreme Court must be taken and perfected within three calendar months from the entry of the order, judgment or decree of the Superior Court. Appeals taken after the time herein provided for shall be quashed on motion.

In Section 5 the second sentence should have preceding it the words "except as herein otherwise provided, and." The section will then read as follows :

SEC. 5. Bail upon any appeal shall be entered in the court from which the appeal is taken, shall be in the name of the Commonwealth to the use of all parties interested, and shall be sued upon in like manner as official bonds. Except as herein otherwise provided, and subject to revision by the court from which the appeal is taken, the prothonotary or clerk thereof shall fix the amount of bail, and approve or reject the security offered. For all services in connection with any appeal he shall receive the sum of three dollars.

That was suggested by Mr. Jacobs, I think, to cover the case of an appeal from an injunction where the court itself fixes the amount.

At the end of Section 15 the committee have added these words, in order to comply with existing laws and avoid, if possible, contention, "and excepting also where a corporation other than a county, township or municipal corporation appeals on its own behalf, such appeal shall be quashed unless bail is given to operate as a supersedeas, as herein provided."

The section will then read as follows :

SEC. 15. Appeals may be taken from any sentence, order, judgment or decree, without security, in any proceeding where by law the same is or may be allowed, but in such cases the appeal shall not operate as a supersedeas, except when a county, township or municipal corporation, or any one suing or defending in a representative capacity, is the appellant; and excepting also where a corporation other than a county, township or municipal corporation appeals on its own behalf, such appeals shall be quashed unless bail is given to operate as a supersedeas, as herein provided.

There are two Acts already providing for this as the existing law.

And at the end of Section 16 the committee have added these words: "Nor shall an appeal postpone payment in accordance with the final confirmation of any account, adjudication, distribution, report, or award of damages by a jury of view, except to the extent necessary to preserve the rights of the appellant, unless specially so ordered by the court below or by the appellate court, or by any judge thereof;" so that the section shall read :

SEC. 16. Nothing herein contained shall operate to hinder the court below, in its discretion, from directing and enforcing the sale of any property that may be perishable, notwithstanding an appeal, the fund realized to be brought into court pending the appeal; nor to hinder the court below from proceeding with the cause appealed from in anything not affected by the subject-matter of the appeal; nor shall an appeal postpone payment in accordance with the final confirmation of any account, adjudication, distribution, report, or award of damages by a jury of view, except to the extent necessary to preserve the rights of the appellant, unless specially so ordered by the court below or by the appellate court, or by any judge thereof.

It was also suggested that it would be wiser to substitute for Section 22, two sections, one of which it would be wholly useless to read, but the substance is that instead of having simply a general repealing clause we would have a specific as well as a general repealing clause, referring by name to the Acts and parts of Acts intended to be repealed, as far as that could be done, in the same way as was done by Judge McPherson in his Evidence Act. You could not carry these Acts in your mind if I were to repeat them, but they begin with the Act of 22d May, 1722, and run down to the Act of 24th June, 1895. You may imagine that it would be impossible to carry those in your minds; but the intention is to retain at the same time the general clause to cover the possibility of the omission of any Act intended to be repealed. And the last section, following Judge McPherson's plan, fixes the time when the Act shall go into effect, as follows :

This Act shall go into effect July 1, 1897, and shall apply to causes then pending, but the limitation of time herein provided for, as against a party entitled to appeal from a sentence, order, judgment or decree, theretofore entered, shall not begin to run from that date, if but for this Act the right of appeal would have extended after that date beyond the time herein prescribed.

In Section 19 the printer transposed the words "Supreme" and "Superior." Of course there could be no appeals from the Supreme Court to the Superior Court.

MR. ASHHURST, Philadelphia: Mr. President, to bring the matter before the meeting, I move that the report be accepted and the recommendation of the committee in favor of the bill be approved.

This motion was duly seconded.

JUDGE SLAGLE, Allegheny: I move to amend the motion by saying that these sections be read and passed upon separately.

MR. BAER, Berks: I trust the motion of the last gentleman will not prevail. It would be impossible to consider this bill fairly by sections. It should stand as a whole, except the amendments of one or two sections. The committee have considered the whole subject very carefully. It will consume a great deal of time, and it would be much better if any gentleman found fault with any of the sections to point out the defect, and move for a special vote on a particular section. Any amendments desired to be made could be reached in that way. Here are twenty-three sections to a bill, and it will take us all the afternoon and part of to-morrow to consider it, if it is to be considered in the way suggested by Judge Slagle.

MR. SIMPSON, Philadelphia: The members present may not recollect, but the bill was in fact gone over section by section with the judges of the Supreme and Superior Courts. Every judge was present when the whole matter was gone over in this form, so that the bill as proposed has received a pretty careful consideration in that way. In addition to that, the Committee on Law Reform sent copies of the bill

to various Common Pleas judges, and it has received their personal attention ; and it has, therefore, had a very careful consideration, section by section.

JUDGE SLAGLE, Allegheny : There is just one matter that attracted my attention in reading this Act hastily. I never saw this bill before to-day, and I presume there are other members of the Association that have not seen it. There is one section that attracted my attention—I cannot just turn to it—in reference to the provision for the certification of records by the judges of the courts. I have always regarded that as one of the humbugs of our practice, because the records are kept by our clerks, and the courts cannot know whether the record is made up in accordance with what transpired, and it is a mere formality. I think that ought to be done away with, because it is a mere formality and has nothing in it at all. I merely call that to mind as one thing I noticed in passing. I think, therefore, that if this bill is read over section by section some of the members of this Association might observe other things that they would want to have corrected.

MR. SIMPSON, Philadelphia : If Judge Slagle will permit me—the Act as originally drafted by the committee had just the very clause in it that he suggests ; namely, that the prothonotary or clerk of the court below should certify the record ; and that met with opposition from all the judges of the Supreme and Superior Courts, and from substantially every Common Pleas judge that read it. And it was the judges, therefore, that caused the change in this section to meet that very thing. The section referred to by Judge Slagle is the second section, the last sentence in it. As I say, most of the Common Pleas judges objected to the prothonotary certifying the record, saying that, if that were done, the record would come into the appellate court without their seeing whether or not there was upon that record things which had been agreed to in the court below, and which were in fact the foundation of the action of the court below, from which the appeal was taken ; and it was insisted also by Judge

Rice, of the Superior Court, that if you permitted the clerk or prothonotary of the court to certify the record, the judge of the court below would lose all responsibility in regard to the matter. These were the reasons why that sentence was inserted in the way it is.

**THE PRESIDENT:** The question before the house is, whether or not the bill shall be read section by section, or whether it will be possible to adopt the suggestion of the member from Berks, and refer to particular clauses or sections to which exception may be taken.

It would be quite in order for a motion that the bill shall be read section by section. Does the gentleman who made the suggestion that the bill be read section by section intend to press it as a motion?

**JUDGE SLAGLE, Allegheny:** I do.

**THE PRESIDENT:** Then is the meeting ready for the vote upon that question, namely, whether the bill shall be read section by section?

The question being upon the motion as stated by the President, and a division being called for, there were 29 ayes and 75 nays. The President thereupon declared the amendment lost.

**MR. DIVELY, Blair:** Mr. President, Section 6 reads: "An appeal from an order, judgment or decree, directing the payment of money shall operate as a supersedeas, if the appellant gives bond," etc. I do not understand that. Whether that bond may be given by the man himself? Do the committee mean sureties? If they do, I think the section should state that, otherwise a man may give his own bond. And the section should state whether there is to be one or more sureties, or it might say a bond approved by the court. A mere direction to give bond might raise the question whether the man's own bond could be given.

**MR. SIMPSON, Philadelphia:** If the gentleman will read Section 5, he will find it provides that the prothonotary or clerk shall fix the amount of bail and approve or reject the security offered.

MR. DIVELY, Blair: What security?

MR. SIMPSON, Philadelphia: The security on the appeal, of course. What other security could there be?

MR. DIVELY, Blair: Why not state it? I would, therefore, offer an amendment by adding after the word "bond" the words "with sufficient surety or sureties."

THE PRESIDENT: Will the chairman of the committee accept that?

MR. SIMPSON, Philadelphia, (Chairman Committee on Law Reform): There is no objection to that; it would have to go through all the sections, however.

MR. DIVELY, Blair: Let it go through all of them.

The question being upon the amendment of Mr. Dively, to insert the words "with sufficient surety or sureties" after the word "bond," it was agreed to.

MR. HIESTER, Berks: I wish to speak to the matter referred to by Mr. Dively. I do not agree with the chairman of the committee here that the matter has been determined by this Section 5. Nor do I, in reading this Act, learn whether or not, for the purposes of an appeal simply, it will be necessary to enter bail, or if bail be entered whether it would be by recognizance or by bond. If you take the general Sections 4 and 5, which treat this matter generally, you will find that the language is not so clear as to leave it without doubt whether for the purposes of appeal alone bail may be entered. If you will compare Section 5 and Section 4, you will find that that may or might be a strained interpretation perhaps making a requirement that any appeal should require bail.

Then the character of the bail entered. Referring to Section 5, it says that bail upon any appeal shall be entered in the court from which the appeal is taken, shall be in the name of the Commonwealth to the use of all parties interested, and shall be sued upon in like manner as official bonds. That would seem by implication to indicate that the bail shall be by bond, not by recognizance; but it does not say so



in terms. Nor does it state what shall be the character of the security given, whether it be by one surety or one or more sureties, whether these sureties shall be individuals or whether they may be corporations, or whether it shall be by a deposit. There is nothing to determine that. Then, again, if you go to Section 6, and pick out the language in Sections 7, 8, 9, 10, 11 and 13, you will find that all that is required is that the appellant shall give bond. There is no further provision made whatsoever for security or for sureties. Nor does it determine the character of the surety, or whether it shall be one or more. It seems to me that the Act should be revised in that respect.

MR. MCGIRR, Allegheny: I would like to ask a question of the Chairman of the Committee on Law Reform. When an appeal is entered, Section 2 says, "The prothonotary of the appellate court shall issue a writ in the nature of a writ of *certiorari* directed to the court from which the appeal is taken, requiring said court to send to the appellate court for review the record in the cause." Now, suppose it be an appeal on a distribution by the Orphans' Court, by decree, distributing to one \$1000, and to another \$2000. The distributee who receives \$1000 would appeal to the Superior Court, and the distributee who receives \$2000 would appeal to the Supreme Court. To which court will the record go?

MR. SIMPSON, Philadelphia: My recollection is that you will find in the current volume of the Advance Reports the settlement of that very question by the Supreme Court, under the Superior Court Act; and that is, that where the amount involved is in fact sufficient to carry the case to the Supreme Court, it goes directly there.

MR. MCGIRR, Allegheny: I am aware of that decision. I want to ask whether it would not be wise that in case of appeal to both courts the record of the entire case shall go to the Supreme Court?

MR. SIMPSON, Philadelphia: This Act is not intended to cover the question of jurisdiction between the Supreme

and Superior Courts. If we undertake that, we will run foul of the fact that the Act is not covered by the title, which could not be made to cover the provisions of the Act. We had better leave the Superior Court Act alone now, especially as it has received a sensible construction.

MR. MCGIRR, Allegheny: What will your clerk do in remitting the record?

MR. SIMPSON, Philadelphia: He will remit it to the court from which the *certiorari* came. The court below is bound to send the record to the court which issues the *certiorari*.

MR. MCGIRR, Allegheny: There may be two *certioraris*.

MR. SIMPSON, Philadelphia: He would have to be responsible for his return; but there may be two to-day. You cannot put in any language to avoid that.

MR. MCGIRR, Allegheny: I want to know whether you intend the Act to apply, if there are two *certioraris*?

MR. SIMPSON, Philadelphia: In point of fact, if it comes down to that, if you file your record in any particular case with the prothonotary of the Supreme Court, you have in fact filed it with the prothonotary of the Superior Court. It is lodged with the same person, and it does not matter whether it then goes to the Superior or Supreme Court. Therefore, if two writs should be sent down, if that were possible through the mistake of anybody—I do not care how it might be done—and the record were sent to the hands of the prothonotary of the Western District, it would be in the right man's hands, whether in the Supreme or the Superior Court; and the Superior Court Act in terms provides that if the appeal has by mistake gone out from the wrong court, it shall be certified under that Act to the proper court.

THE PRESIDENT: The question is now called for, gentlemen; are you ready for the question?

MR. MCGIRR, Allegheny: What is the question?

THE PRESIDENT: The question is upon the motion of

Mr. Ashhurst to accept the report of the Committee on Law Reform and adopt their recommendation.

JUDGE SLAGLE, Allegheny: I move that the last sentence of Section 2 be amended by striking out the words "duly certified by any judge of the court below."

MR. SIMPSON, Philadelphia: If that amendment is adopted we will run counter to every judge of the two appellate courts without any exception.

MR. PEALE, Clinton: Referring to the motion just made—it has appeared to me somewhat in the same wise as suggested by the mover that the last sentence should be amended so as to read "The prothonotary shall prepare, duly certify and forward the record to the appellate court on or before the date mentioned in said writ or in such rule or special order." Then there would be a provision for certifying the record. But, if you strike out the words "duly certified by any judge of the court below," and do not insert what I have suggested, then there is no provision in this bill for certifying the record at all.

JUDGE SLAGLE, Allegheny: I will accept the amendment.

MR. PEALE, Clinton: Then the amendment is to add, after the word "prepare," the words "duly certify," and to strike out, after the word "court," "duly certified by any judge of the court below;" so that the sentence will read, "The prothonotary shall prepare, certify and forward the record to the appellate court, on or before the date mentioned in said writ or in such rule or special order."

THE PRESIDENT: The question before the Association is the amendment just suggested by Mr. Peale.

MR. LAIRD, Beaver: It seems to me that the prothonotary has no power to certify a record. The prothonotary is merely a clerk. He takes the record as he finds it. The judge, the person who controls the record, is the only man who can certify it. Now, as I understand it, this is merely a suggestion to the Legislature, as the sense of the members of the profession throughout the State of Pennsylvania.

Therefore, I think that all of these discussions will amount to nothing. This Act has been carefully digested by the Committee on Law Reform, and, to my mind, should be adopted. My view is that in this particular case the judge is the only man who can certify the record. The prothonotary declares that it is a true copy of the record, and the judge certifies it, and, therefore, I think the amendment ought to be voted down.

JUDGE SLAGLE, Allegheny : I merely want to say one word as the reason for making this motion, and that is that this certification of records by the judges of the courts, as is known by every member of the Bar and by every judge of the courts of Pennsylvania, is merely perfunctory.

MR. SIMPSON, Philadelphia : Every judge of the Superior Court denied that, except as to the Philadelphia and Pittsburgh courts.

JUDGE SLAGLE, Allegheny : I venture to say that there is no judge in the State of Pennsylvania now that reads the record to see whether it is correct or not. He knows nothing about it. He relies upon the clerk of the court who makes up the record, and who is responsible for its correctness. Furthermore, in a county such as Allegheny, and in a county such as Philadelphia, and I presume in many other counties in this State, it would be simply a physical impossibility for a judge of the court to certify to the correctness of the record, knowing that his certification is correct. And, therefore, I, as one of the judges of these courts, ask to be relieved from certifying to things I know nothing about.

MR. WILSON, Clearfield : I would like to ask how it is possible for the clerk of the court to certify as to the assignments of error, which assignments of error are sustained, and as to the admission of evidence, which is passed upon by the judge and a bill sealed, and which becomes part of that record ? How can the clerk of the court certify to that under any circumstances ?

JUDGE McCLURE, Union : It appears to me that the amendment should not be passed. My reason is that if

there is any dispute among counsel as to what shall go into the record, the judge can certify it. At present in ninety-nine cases out one hundred it is a mere matter of form. The judges know nothing about it, and they take the certificate of the clerk as true. But it has happened that disputes have arisen, and it has become necessary for the judge to settle them.

MR. SIMPSON, Philadelphia: There is one other thing I should refer to, which was dwelt upon with a good deal of force by Judge Rice. He said: "Suppose counsel comes into our court and says, 'the record is imperfect;' is the Superior Court to send a *certiorari sur* diminution of record to a mere clerk and to treat with the clerk as if he were the one whose judgment and action is to be reviewed by our court?"

The question being called for, and being on the amendment moved by Judge Slagle, namely, that the last sentence of Section 2, being amended so as to read, "The prothonotary shall prepare, certify and forward the record to the appellate court on or before the date mentioned in the writ or in such rule or special order," it was not agreed to.

MR. MUNSON, Lycoming: In Section 5 of the Act, it provides that the court may revise an approval of bail by the prothonotary or clerk. I move to amend by striking out so much of the second part of the section that it will read as follows: "The court from which the appeal is taken, or a judge thereof, shall fix the amount of bail and approve or reject the security offered." I make this amendment for the reason that if the court must pass upon the approval or rejection of the bail by the clerk or prothonotary, it simply becomes double work; and why not have the court once and for all fix and approve or reject the security offered?

MR. LAIRD, Beaver: As I understand it, in ninety-nine cases out of a hundred, there is no question about the bail or the amount of bail or anything of that kind, and the amendment which the gentleman offers would make it the duty of the court in every case to certify the bail. Now, that seems to be unnecessary.

MR. MUNSON, Lycoming: The gentleman does not understand my amendment. My idea was to strike out all authority to the clerk to fix the amount and approve or reject the security offered.

MR. SIMPSON, Philadelphia: The clerk of the court does it to-day in ninety-nine cases out of one hundred.

MR. SNODGRASS, Dauphin: He does it universally except when exception is taken.

The question being upon the amendment by Mr. Munson, it was not agreed to.

MR. O'CONNOR, Cambria: I move the adoption of the bill as amended.

This motion was seconded by Mr. Laird.

MR. LITTLE, Cambria: Our county differs from some counties in Pennsylvania in this respect—our prothonotary is not clerk of the Orphans' Court. I notice in many instances in this bill the word "prothonotary" is used, whereas we have clerks in some of our courts.

MR. SIMPSON, Philadelphia: It is only in one case, and it has been substituted in the amended bill. That was in Section 2, and was a printer's oversight.

MR. MCGIRR, Allegheny: I want to call the attention of members to Section 21, with reference to Supreme Court costs, in which it is provided that the expense of printing paper books, not exceeding 75 cents per page, shall be added. I move to strike that out, simply for the purpose of bringing the matter to the attention of the meeting. It seems to me to be a step in the wrong direction to increase the amount of costs. The costs are too heavy now; and when an appeal is taken by any person he can well afford to stand the expense of printing the record if he gets a decision in his favor, and it is unjust, especially in small cases, to put the expense upon the other party, which may be of very indefinite amount.

This amendment was duly seconded, and the question being on the amendment, and a division being called, the

ayes were 38 and the noes 61, whereupon the Chair decided the amendment not agreed to.

MR. OLMSTED, Dauphin : I move to amend Section 15 by adding at the end thereof the following : " Provided, that no bail shall be required upon appeal upon a judgment entered in favor of the Commonwealth in any cause arising from an appeal on account settled by the Auditor-General and State Treasurer, where a bond with approved security has already been given as required by law."

Upon an appeal the appellant is required, on taking it, to give bond, with two sureties, to be approved by the court, for the payment of whatever amount may be found due the Commonwealth, with costs, and there would seem to be no necessity for any additional bond.

MR. SIMPSON, Philadelphia : That amendment is accepted by the committee.

MR. ARCHER, Philadelphia : Does this act require executors and other trustees to give bail ?

MR. SIMPSON, Philadelphia : No ; you will find a section covering that. In Section 15 you will find that it does not require bail in cases where a county, township or municipal corporation, or any one suing or defending in a representative capacity is the appellant.

The question being upon the recommendation of the bill as a whole with the amendments accepted and adopted, it was agreed to.

THE PRESIDENT : We now pass to the consideration of the second bill providing for the appointment and payment of Legislative Commissioners, prescribing their duties and the duties of the Legislature in reference to proposed legislation. (For text of this bill, see page 73.)

MR. BEDFORD, Luzerne : I move that the report of committee on this bill be adopted and the bill recommended.

Duly seconded.

MR. O'CONNOR, Cambria : I move to amend Section 1 by striking out the first sentence and inserting the following : " The Chief Justice of the Supreme Court, by and with the

advice and consent of his associates, shall appoint as Legislative Commissioners three persons who shall possess all the qualifications necessary for judges of the Supreme Court." My object in adding this is that I should regard the chief executive of the State as one branch of the law-making power, and it seems to me that instead of removing the temptation, it is, like the gentleman's prayer, but praying for more. If the executive should have the power of naming these parties, I do not see why he should not name just such persons as would do his bidding, and the very object of this Act would be defeated.

Now, I do not know that the Supreme Court is the best authority in which to lodge this power; but it would seem to me that, being the highest judicial authority in the State, they would be the parties most interested in doing away with such legislation as they must pass upon year after year, and declare unconstitutional, or so ambiguous as to give them a great deal of trouble. That is why I conceived the idea that the Chief Justice of the Supreme Court should have the appointing power with the advice and consent of his associates. I think they would be the most competent parties, and I think they would be interested in such a degree as to remove doubt as to their motives in making the appointments.

MR. BUDD, Philadelphia: I hope that this amendment will not prevail. The very reason why the power of such appointment should be vested in the Governor is because he is part of the legislative machinery. This body is to be a very important body in the legislative machinery; and, therefore, we should avoid, if possible, confusing the bounds of the Legislative, Judicial and Executive authority, established as one of the fundamental ideas of American Government.

But there is an especial reason, if the Governor should not appoint—and if he does not I do not know who is to appoint—there is an especial reason why the Supreme Court should not appoint. As has been well said by the gentleman who has just taken his seat, these Acts come before the Supreme Court for their judgment as to their constitution-



ality or unconstitutionality ; that is one of the questions that would have to be passed upon by this Commission, in an advisory way, for the benefit of the Legislature ; because, of course, if they recite the conflict of a proposed Act with the law as it exists, they have to recite its conflict, if such conflict exists, with the highest of all law, the Constitution ; therefore, they pass in advance, or give their opinion in advance to the Legislature, as to the constitutionality of the Act proposed. Now, if this body is to be appointed by the Supreme Court, do we not put the Supreme Court just in the position of having to overrule its own men, with the natural tendency to support its own offspring, according as they affirm or disaffirm their opinion as to the constitutionality of the Act ? Therefore, I think on both points, on the ordinary rule of symmetry, and from the point of view of the uncomfortable position in which we shall put the Supreme Court by forcing it simply to overrule its own officers, or pass on its own officers the amendment ought not to be adopted.

JUDGE OLMSTED, Potter : I desire to make a single suggestion, at the risk of being thought troublesome. It is important that these commissioners should be lawyers. They are to have the same qualifications necessary for judges of the Supreme Court. (Laughter.) Now, we all remember the Constitution of 1874, about which we have heard so much to-day, not requiring judges of the Supreme Court to be learned in the law at all. Here is certainly an omission. These men should be lawyers ; and the Governor may appoint laymen.

JUDGE WHITE, Indiana : Mr. President, if my friend Mr. O'Connor will press this amendment, as an humble member of this body I should certainly support it.

Mr. President, it is with trepidation and hesitation that I attempt to say a word in opposition to the crystallized thought of the committee that has prepared this bill. I say this with all sincerity.

THE PRESIDENT : I beg your pardon, Judge White ; but I think you are speaking to the general question. There

is an amendment before the Association, substituting the Chief Justice and his Associates for the Governor and the Senate.

JUDGE WHITE, Indiana : If I would be allowed, may I test the sense of this body before we spend time in detail, and submit an amendment reaching the merits of this bill, by moving to amend the bill—and I think I can do it in this informal way—by striking out the enacting clause. (Laughter.)

THE PRESIDENT : There is an amendment before the house.

JUDGE WHITE, Indiana : Do you entertain my amendment ?

THE PRESIDENT : I think it is out of order.

JUDGE WHITE, Indiana : It is an amendment to an amendment.

THE PRESIDENT : Exactly.

JUDGE WHITE, Indiana : We have Section 1 before us, and this will reach the merits of the whole bill.

THE PRESIDENT : If Mr. O'Connor will withdraw his amendment for the moment, and allow the question to be taken upon your motion, that, of course, will raise the merits of the entire question.

JUDGE WHITE, Indiana : I then withdraw my amendment, and move to indefinitely postpone the consideration of the pending bill.

MR. WETZEL, Cumberland : There has been no motion made at all to adopt the suggestions of the committee and recommend the bill.

THE PRESIDENT : There was a motion made by the gentleman from Luzerne to adopt the recommendation of the committee, and then an amendment by the gentleman from Cambria to substitute the Chief Justice and his Associates for the Governor and the Senate. If the member from Cambria will withdraw his motion to amend, then we can have the question raised.

MR. O'CONNOR, Cambria : I will withdraw my motion to amend for the present, with the understanding that I may renew it hereafter.

JUDGE WHITE, Indiana: Then I move to postpone indefinitely the further consideration of the proposed bill.

MR. LAIRD, Beaver: I second that motion.

JUDGE WHITE, Indiana: The motion is seconded to indefinitely postpone the consideration of the proposed bill. That brings up the merits of the whole question. And on that motion I wish to say just a few words.

This is a practical body, as every assemblage of lawyers in Pennsylvania or elsewhere is or should be. I fancy an association with the aroma about it that this one has—I merely referred to the locality in which I am, but I will extend it if you desire—in a word, I am opposed to the adoption of this measure, because I think it is impracticable. I think it never will be enacted by the Legislature. It involves the thought of what? It involves the thought that the Legislature, the representatives of the people, a constitutional department of the government, is unable to meet the requirements of all the duties of legislation. That is the fundamental feature of this bill. As such a proposition, I do not think it will be acceptable to the intelligence of the Legislature. If it is enacted, it would build up a tribunal or organization, which will always excite prejudice in the mind of practical legislators; and the suggestions or report of such a commission, if disregarded by the representatives in the Legislature in the passage of a bill against the report of such a commission, will be a repeal of the suggestions or provisions of this enactment, *pro tanto*. And so with the enactment of every bill. Every practical legislator, and there are many within sound of my voice, realizes how sensitive the man is who comes to the Legislature clothed with the authority of the voice of the people as their representative, and who is presumed to have had his intelligence and capacity passed upon, every one knows how sensitive every man is to supervision by a tribunal that comes not directly from the people, but is the creation of one department of the Government.

I think then, Mr. President, this bill will never, in the first instance, be enacted into a law; and, if it is enacted into a law, its suggestions will not be practicable.

Then, again, I think it is calculated to attenuate the Legislature. I listened with patience and with pleasure to many of the utterances of the President of this Association to-day, laudatory of our Constitution, and reflecting in some respects upon the character of our Legislature. While I sympathize entirely with him about the character of our Constitution, which I think is, par excellence, the best constitution of any of the States of the United States, I do not sympathize with the general criticism that has been made and indulged in, from time to time, of the Legislature of Pennsylvania, and its legislation, in the main, will compare well with that of any of the sisterhood of States.

Taking the history of our legislation, the personnel of the Legislature, who composed them in the earlier stages? I recall the names of Horace Binney, John Sargeant, Charles Chauncey, and later, George Sharswood, and other names I cannot now recall, and I heard pass from your lips to-day, Mr. President, the respected name of Charles R. Buckalew. He was quoted as making utterances in the Constitutional Convention reflecting upon the Legislature. That may be so in particular instances. I know he was a man as pure as the waters that flow in the streams of his native county; but there are some of us who served with him there in the Legislature, at the same time. I can point to the representatives from your own city from time to time; I can point to the representatives from Allegheny from time to time. I can point to the representatives from the counties from different parts of the State. And I fancy that that personnel will compare with the representatives of any other legislative body. And, not to enlarge upon this, Mr. Chairman, I think it would be wise to trust the people, trust the representatives of the people; and while difficulties have resulted, while inaccuracies in grammar, in rhetoric and otherwise, have crept into our legislation, yet we have tribunals that are amply able to correct them.

The Commonwealth has grown under the legislation that we have had from time to time, from a little Commonwealth

of a few hundred thousand people on to a Commonwealth of six millions of people to-day. Our industries have grown with them. We have general legislation under which our corporations are organized, the business of our courts conducted, and, I think, we can fairly trust them.

Then, again, our Constitution was passed. I admit there have been some irregularities in former Legislatures, but let us trust to the safeguards of the Constitution ; let us trust to the suggestions that may come from the Attorney-General, from the Secretary of the Commonwealth, from the constitutional officers that exist to-day, as the constitutional advisors of the Legislature. I hope, Mr. President, we will not be carried away by general reflections against the character of the Legislature of Pennsylvania, into establishing a tribunal which will only excite the prejudice of the people, and probably the sneers of the Legislature.

MR. SIMPSON, Philadelphia : It strikes me that the man who suggests that a Sharswood, or a Sargeant, or a Buckalew, or a Binney, or any man of that ilk, would have resented getting information to enable him to perform his duty properly, very illy understands the character of those men. It seems to me more than that—that the question which this Association is called upon to meet in the present motion depends, not upon what this member of the Legislature may think, or this set or class of people may think, upon anything pertaining to the general honesty, the general integrity, or the general dishonesty or general lack of integrity of the legislators, individually or as a body. The question which we are called upon to meet by this bill is a plain and simple one, as to which the way-faring man, though a fool, need not err. If we face the proposition fairly, it is this : Given the character of legislation which we have had in recent years, assuming that it is entirely honest, assuming that there has been a total absence of corruption in the Legislature, would such a bill as this enable us to get legislation which would be more satisfactory to the people ?

It is all nice enough, you know, to say that the people

resent this thing. If there is anything that is absolutely certain, it is that in the adoption of the Constitution of 1874, the people did not resent an attempt to curb the Legislature, but they established the fact that they intended to keep it as far as possible within bounds. It is not the people, therefore, that Judge White refers to as a body of men—I mean the six millions of people—it is the two hundred and fifty people that sit in the halls at Harrisburg. But what have we to do with that? Is it right for us, for the benefit of the people of this State, to ask the Legislature and the Governor to give us such assistance that we will avoid the difficulties under which we have been laboring? If it is right for us to ask that, if it is a question of right that we should ask it, why need we take one other step forward or backward, or sideways; why need we indulge in any rhetoric or any retrospection whatsoever? Meet it, then, as a question of right. Would not the people be benefited by this thing? If they would, vote down this resolution; if they would not, then sustain it and indefinitely postpone the consideration of this bill.

MR. PATTERSON, Allegheny: Just one word in reply to the forcible remarks of the last speaker. It does seem to me that the express point raised by Judge White—and that is, that the question is not altogether a question of efficiency of the Legislature, nor a question of their honesty or integrity—has not been covered. This is the point, that by appointing this commission you are seeking to do, by another party, work which is really and practically the Legislature's work. The functions to be performed by this special Commission are functions which properly should be discharged by the Legislature itself. It is their business to know the existing state of the law. It is their business to suggest amendments. It is their business, if wisely and prudently elected, to know whether proposed legislation is in proper form and suitable or not.

Now, just in so far as you seek to supplement a body of this importance by putting another body to do their work,

you take from them every responsibility which should rest upon them and them alone. It is not by any such makeshifts, it is not by any such temporary expedients to get by an evil time, that you can secure a permanent change, but only by realizing the fact that the position of making law is an important one, the most important next to the judicial position in the gift of the Commonwealth, and which can only be filled by gentlemen who are equipped sufficiently to determine what is the existing need of reform, and how to carry it into effect. If you place men in the legislature, you must confide this work to them ; and by attempting, by any sort of makeshift, to get past this would increase instead of relieve the evil.

MR. RHODES, Philadelphia : I desire to say just one word in reference to what has been said by the last speaker. It seemed to me from those remarks that he and Judge White lost sight of the fact that it is not the Bar Association of the State of Pennsylvania who are doing this. If it is done, it is the Legislature itself passing an Act to assist itself in framing proper laws. If this bill is passed, it is part of the machinery of the Legislature. The Legislature passes this bill and then it takes to itself the assistance of able men, men who are able to give it assistance.

MR. PEALE, Clinton : I may be allowed to remark with reference to this bill, it seems to me to be a bill to appoint a Commission to O. K. the legislation of the Senate and House.

(A VOICE : That is right.)

And it is to me a practical attempt to curb the Legislature and to ask the Legislature to put the curb upon themselves.

MR. SIMPSON, Philadelphia : Does the gentleman know that this suggestion came from the Legislature, and primarily from the Speaker of the House ?

MR. PEALE, Clinton : I care not where it came from ; it strikes me as being largely absurd. Having had a little legislative experience, I know full well how a proposition of

this kind will strike the Legislature of Pennsylvania. It is in fact—though I do not desire to use any improper language—it is an impertinence from the Bar Association to the Legislature of Pennsylvania. I repeat the remark—it is impertinence which presumes bad faith and ignorance on behalf of the members of the Legislature.

It first starts out with presuming that there is ignorance and incompetency. It next assumes that there may be a lack of integrity. Now, notwithstanding all that has been said to-day in reference to the Legislature of Pennsylvania, there are isolated and marked cases of bad faith ; but the Legislature of Pennsylvania as a law-making body is a respectable body in comparison with any other legislative body in the land. And to say to a body of Senators and Members of Assembly that have been elected by the people to discharge certain constitutional duties, that a committee shall be by themselves appointed to supervise and O. K. their work, is simply an offense. And for my part, I think this bill has not a single thing from beginning to end to recommend it to the Legislature for adoption in the form of a law.

MR. LAIRD, Beaver : I do not wish to appear before this body as discussing questions—I am one of the younger members—but I think the first paragraph under Section 5 would be sufficient for this body to recommend this bill to the Legislature, and that is, requiring the commissioners to report a concise statement of the existing law, if any, and the change proposed by the new bill.

In 1893, two Acts were passed in relation to the office of commissioner. Those two Acts seemed to be inconsistent, seemed to be diametrically opposed, and in the Advance Reports, I think in 175 or 174 Pa. St., there are two cases that cost a certain county in this State probably \$3000 or \$4000. Now, it is not a question of good faith ; it is not a question of corruption ; it is a question of opportunity to ascertain precisely existing conditions.

There is nothing more certain than that the members of the Legislature do not always know the law of the State as it



has been passed, and as it has been approved by the Supreme Court of this State. There is no better evidence of that than the Act in regard to cities of the third class, approved on the 23d of May, 1887, an Act which filled over one hundred pages of our statute books, and which, as a law, was declared unconstitutional.

As a part of my remarks, gentlemen, I wish to read here something of the last Report of the Pennsylvania Bar Association, held at this place one year ago, some remarks made by Mr. Allinson, of Philadelphia. He says: "I suppose it would be in order at this time to bring before the Association, for its consideration and reference to the proper committee, a matter concerning which the Speaker of the House spoke to me some time ago. Unfortunately, he is not able to be present. He suggested that this Association refer to the proper committee, so that there might be a report to this body by the next annual meeting, the consideration of some measure looking toward the technical revision of bills before the Legislature." Mr. Allinson said further, referring to the Speaker of the House, "that the experience of the last session was that about one-half of the time of the Legislature was consumed in the consideration of bills that were utterly unconstitutional or utterly futile in performing what they were intended to do; and he thought the time was ripe for some measure of that kind, and that it would be favorably received by the Legislature." Mr. Allinson then moved that the consideration of the question of technical revision of bills before the Legislature be referred to the Standing Committee on Law Reform.

Now, as the chairman of the Committee on Law Reform has said, this proposed measure comes from the Legislature itself, not from you and me as members of the Bar, but from the Legislature itself. And I take it that no difference what the action of this body may be, it will be merely by way of suggestion. If the Legislature in its wisdom should pass this bill, then it becomes a part of the law of the land.

I seconded the motion made by Judge White to indefi-

nitely postpone the consideration of this bill, but I merely did so for the purpose of bringing it before this Convention ; I did not do it for the purpose of making a speech. I did not intend to say anything, had it not been that I wished to call the attention of the Association to the remarks made by Mr. Allinson, which I have quoted.

MR. KAUFFMAN, Lancaster : I think that the title of this Act ought to be changed, judging from the gentlemen who have spoken against the passage of the bill, and the applause that they have received. If the Act was called, "An Act to tramp upon the toes of all ex-members of the Legislature, all present members of the Legislature, and all the gentlemen who expect to be members of the Legislature " (laughter), it seems to me, it would fill the bill.

MR. AMERMAN, Lackawanna : I know this meeting is anxious to proceed to a vote upon this bill, but I also feel that a great deal of labor has been put upon it. It has been the subject of deliberation. A year ago it was referred to a special committee. Work has been done upon it, and a few minutes ought now, I think, to be given to the calm consideration of this bill. This bill is not attacking the Legislature at all ; its integrity, its honesty, its industry, its intelligence, have not been attacked. The purpose of this bill is to give information to people who are seeking information. There surely can be nothing wrong to say to a member of the Legislature, " The law of Pennsylvania to-day upon this subject is thus or so." And when my friend, Senator Peale, and my friend, Senator White, were in the Legislature, they voted out of the State Treasury money to buy Purdon's Digest for themselves in order that they might know what the law was.

JUDGE WHITE, Indiana : We did that for the benefit of our constituents.

MR. AMERMAN, Lackawanna : It was perfectly proper and right for them to do so ; for how could they be expected to know what the state of the law to-day is unless they had some means of ascertaining it ? As they happened to be

attorneys they might know, but as a great part of the body of the Legislature is not composed of attorneys-at-law, but composed of farmers, mechanics, laborers and of men from different walks of life, how could they be supposed to know what the state of the law to-day is ; and where is there anything wrong or where is there any insinuation as to their honesty in saying, " We will have a committee of lawyers who will tell you what the law of the day is ?" <sup>1</sup>

The purpose of this bill is not to tell the Legislature to pass or not to pass any Act. The purpose of this bill is to give information to members of the Legislature. And they need information. An individual employs an attorney to give him information, to tell him what the law is. He does not reflect upon it himself. He could not be expected to know the law unless he asked someone who knew the law to tell him what it was. The purpose of this bill is honest. The purpose of this bill is to give information to an honest legislator seeking after light. The purpose of this bill is to prevent hasty, ill-advised, ignorant legislation. With five hundred or a thousand bills upon the calendar, they cannot all be examined by the individual member, and someone must give him information. He either gets it through his fellows or someone who is interested. Most of the information brought to him is brought to him by some one who wants the bill passed. He hears that side, but does not hear the other. If a corporation wants a bill passed, it sends a solicitor there, who informs the member and gives him the

<sup>1</sup> In a recent case, *Lloyd vs. Smith*, decided by Mr Justice Mitchell and which is reported in 176 Pa., that learned jurist in considering a constitutional question exhausted in a few sentences the underlying thought on which the recommendation of such a measure is based. After discussing a particular Act, the constitutionality of which was challenged, the learned judge speaks as follows: " The evil at which that (constitutional restriction) is aimed is ignorant or uninformed legislation. There is no provision that the legislators shall be learned in the law and although many of them are so, yet it is not always possible for them to utilize or apply their knowledge immediately in the daily work of legislation. Hence, changes in the law are not unfrequently made or attempted by legislators who determine what the law shall hereafter be, without knowing what it now is. This fact in juridical history is as old as the record of judicial interpretation of statutes, and numerous examples could readily be given from the legislation of this State in the last twenty-five years, to show that the mischief has not been cured by the constitutional provisions."

law from his standpoint; but where is the man to give him the law from the other standpoint?

Taking it as a whole, I think this bill is a meritorious bill; and, as has been said by those who have preceded me, it is not passing a bill, but merely suggesting to the Legislature that we provide some means by which they shall get information.

(Repeated calls for the question.)

MR. PEALE, Clinton: If the gentlemen do not desire to hear me, of course I will not intrude; but the experience of legislators is that the majority of unconstitutional bills that are upon the files are drawn by eminent lawyers. (Applause.) That is true. I appeal to every man who has ever had any experience about it. The majority of unconstitutional bills that come before the Senate and House are drawn by lawyers.

MR. SIMPSON, Philadelphia: Lawyers who are interested in having the bill passed.

MR. PEALE, Clinton: The very Mechanics' Lien Law, which the Supreme Court pronounced unconstitutional, was drawn by one of the most eminent lawyers of the Philadelphia Bar.

MR. TODD, Philadelphia: Who knew it was unconstitutional when he drew it.

MR. PEALE, Clinton: The gentleman who addressed the Chair from Beaver alludes to the fact that two contradictory bills were passed by the same Legislature. Why, in a recent report there are two decisions of the Supreme Court upon the Mechanics' Lien Law in the same volume that are absolutely opposite to each other, and because the Legislature did make such a mistake as that the gentleman says "ignorance." What are we to say of the Supreme Court then? But, more than that. The Supreme Court in a recent decision, in a tract of original block surveys, where each tract calls to adjoin the other, made a ruling which makes a vacancy of 100 acres in the midst of a block of surveys where each tract calls to adjoin the other, and there is no line on the ground to prevent the tracts from meeting there at all.

What would you call that? And shall a commission be appointed for the Supreme Court? (Laughter.)

JUDGE GREER, Butler: I have a word to say in regard to this suggestion, and for my part I am opposed to it. We have the House, and the Senate, and the Governor in this State as the law-making power. The House and the Senate represent the people. When a bill is presented to the House it is referred to a committee. If in the House, the Committee on Judiciary General is generally composed of the best lawyers in the House. That bill is very carefully scrutinized. It is carefully examined, and the report is made upon that bill as the law and the necessities of the case may demand. Then it is examined and read three times in the House, then it comes to the Senate, and when in the Senate is again referred to a committee.

The Committee on Judiciary General—say it is a legal bill, a bill that relates to the laws—carefully examine it. Then it is again examined on the floor of the Senate. And I want to say that I spent eight years in the Senate of this State (applause), and I might say more than that—that when on the floor of that Senate, at my right hand and on my left, were men like Wallace, Dill, Peale, and Stone, and John Stewart, one of the judges of this State—men like that all around. Every man of them competent and able to sit upon the Supreme Bench of this State. Lawyers, as John Hall, of Elk County, one of the ablest lawyers I ever met in my life, a man I have repeatedly said would adorn the Bench of the Supreme Court of this State. Now, gentlemen, if these men are not competent, these men who come from the people, who are acting for the people, and with the people, and by the people, are not competent to perform the duties which the Constitution of this State has given them, then I say, “God save the Commonwealth”! (Applause.)

Now, gentlemen, for one I am opposed to this suggestion. I say, as my friend here, Senator Peale, has properly said, you might just as well ask the Legislature to appoint a court to overrule the courts, just as well.

SENATOR PEALE, Clinton : More so.

JUDGE GREER, Butler : More so. They need it, no doubt of that. We might just as well have a law passed next winter that each judge shall appoint a committee of his Bar to advise him to do his duty. More than that, when it comes to the Governor, what is the Attorney-General for? It is his duty to examine and advise the Governor as to the propriety and constitutionality of the bills that are passed.

MR. PALMER, Luzerne : I might suggest that while this gentleman was in the Senate, and all the other learned and able legal luminaries were there, that the Governor vetoed thirty-three per cent. of their legislation as unconstitutional. (Laughter and applause.)

(Calls for the question.)

THE PRESIDENT : The question before the meeting is on Judge White's motion, which is to indefinitely postpone the consideration of the proposed bill.

The question being upon the motion of Judge White as stated by the President, and a division being called for, there were 51 ayes and 81 nays, whereupon the President declared the motion not agreed to.

THE PRESIDENT : The Chair is now ready to receive amendments to any particular section of the bill.

MR. O'CONNOR, Cambria : I renew my amendment to strike out the first sentence of Section 1 of the bill, and insert :

The Chief Justice of the Supreme Court by and with the advice and consent of his associates shall appoint as Legislative Commissioners three persons who shall possess all the qualifications necessary for judges of the Supreme Court.

MR. PEALE, Clinton : I desire to submit a little matter that my friend may accept as a part of his amendment ; that is, to strike out the first part of Section 1 and to substitute the following :

That the Supreme Court is hereby empowered and required to assign at least three judges of the Superior Court to act as Commis-

sioners ; the said appointment to be made on or before the first day of December in each year ; and it shall be the duty of the judges of the Superior Court thus assigned to discharge the duties hereinafter designated for said commissioners.

MR. O'CONNOR, Cambria : I do not accept that amendment ; I think it is impracticable.

THE PRESIDENT : Is the amendment of the gentleman from Cambria seconded ?

The amendment was duly seconded.

MR. O'CONNOR, Cambria : In my amendment to that first section I would like to insert the words, " who shall be learned in the law," so that the first sentence shall read, " The Chief Justice of the Supreme Court by and with the advice and consent of his associates shall appoint as Legislative Commissioners three persons learned in the law, who shall possess all the qualifications necessary for judges of the Supreme Court.

The question being upon the amendment proposed by Mr. O'Connor, it was not agreed to.

MR. RICHARDS, Berks : Mr. Chairman, I would move to amend the draft of the bill under consideration by striking out Sections 4 to 8, and in the title the words, " and the duties of the Legislature." It seems to me that the effect of Sections 4 to 8 is simply the enactment of rules of procedure for the Legislature. The Constitution provides that each House shall establish its own rules of procedure ; and while, perhaps, the enactment of this bill might, so far as the Legislature which passes it was concerned, amount to the adoption of rules for its government, I do not see how constitutionally it could perpetuate those rules so as to be binding upon any succeeding Legislature. If those two sections are removed from this bill, the result would be to provide the Legislature upon its own request, and upon the subject of any pending bill, with the advisory opinion of the Commissioners proposed to be established ; but, after the submission of their report, it would allow the Legislature to make such disposition of the report as they saw proper. I

would not go on to provide how legislative action should be taken upon that report subsequently. It strikes me that that is one feature of this bill which would be calculated to excite the opposition of the Legislature itself, and, it seems to me, excite the criticism of many of the members of this body. Why undertake to prescribe by an Act of Assembly the duties of the legislative body itself? It seems to me that that, on the face of it, is rather an absurdity. It is proper enough to provide a body with whom the Legislature may consult for information, of the benefit of which they may not avail themselves; but to go on and provide a rule of procedure, saying what should be done with these reports, how these reports shall be acted upon, seems to me to be trespassing upon the legislative functions proper; and, so far as a binding rule by one Legislature upon its successors, might be entirely unconstitutional and void. Why not propose a bill that shall afford to the Legislature the benefit of the services of such an experienced commission as is provided for by this bill; and then, after their report is submitted to the Legislature, allow the General Assembly to act upon the report in any way they think proper, and under existing rules which already provide how bills of any and every kind can be acted upon? To my mind, that would preserve the dignity and the constitutional independence of the Legislature, and at the same time afford them all the benefit of the information that is sought to be provided for by machinery of this kind.

MR. SIMPSON, Philadelphia: Will the gentleman permit me to ask him a question?

MR. RICHARDS, Berks: Certainly.

MR. SIMPSON, Philadelphia: Will you kindly tell me how, under that suggestion, any bill would get before this commission?

MR. RICHARDS, Berks: Section 3 provides that any member may submit a bill to this commission.

MR. SIMPSON, Philadelphia: But what about the one he does not submit?



MR. RICHARDS, Berks : He need not do it. Why oblige every bill presented to the Legislature to be submitted to such a commission? That would be virtually making almost another constitutional tribunal, making a third branch of the Legislature. Give the Legislature the benefit of the advice of this Legislative Commission in all those cases where they choose to ask it, but do not ask them to enact a law that they themselves shall in every case submit every bill that may be brought forward in the Legislature to the judgment of the Commission. It seems to me that it dwarfs the importance and dwarfs the dignity of the Legislature, and trespasses upon the constitutional provisions under which each House establishes its own rules.

MR. SIMPSON, Philadelphia : Would not the gentleman's idea meet with exactly the difficulty they have in New York under their present law, which is, that a bill which it is intended to snake through the Legislature never would get to the Commission, and the bill needing a report upon it most would never have any report upon it? Is not that the result of your proposition?

MR. RICHARDS, Berks : No ; why could not a motion be made in the Legislature—if you omit the provision requiring all bills referred to this committee—why could not a member of the Legislature move that the bill be referred, and bring up the question in that way? You would allow them to take the benefit of the advice where they required it, but leave them to be the judges of when they do require it.

The question being upon the amendment of Mr. Richards to strike out Sections 4 to 8 and the words “and the duties of the Legislature,” in the title of the proposed bill, it was not agreed to.

THE PRESIDENT : The question now recurs upon the entire bill.

JUDGE WHITE, Indiana : To make it as popular as possible, I wish to offer another amendment. I observe Section 2 provides that said commissioners shall serve from the first day of December prior to any session of the Legislature

until the adjournment thereof, and shall receive as compensation for their services the sum of \$750 per month for each month and part thereof during said periods. I am not sufficiently an economist, but I move to strike out the words, “\$750 per month for each month or part thereof for such periods,” and insert the words, “the same compensation as members of the Legislature for their services.”

This amendment was duly seconded.

JUDGE MCPHERSON, Dauphin : I desire to offer a substitute for that amendment, and that is to leave that amount blank. Of course, the Legislature will ultimately fix the amount themselves, if they get as far as that ; and, therefore, any recommendation of ours will go for very little. I think, therefore, it will come before the Legislature with very much better grace by leaving the amount blank. I offer that as a substitute for Judge White’s amendment.

JUDGE WHITE, Indiana : I accept that amendment.

MR. SIMPSON, Philadelphia (Chairman of the Committee on Law Reform) : The committee will accept that amendment and strike out the words, “the sum of \$750 per month for each month and part thereof during said periods,” in Section 2.

JUDGE MCPHERSON, Dauphin : I desire to suggest to the Association the propriety of considering whether this measure might not be sent to the Legislature without affirmative recommendation ; and my reason for doing so I will state in very few words. It is simply impossible for a measure like this, thus presented for the first time in this State to a Legislature, to become a law. No Legislature will adopt it when it is first presented. It must have discussion ; and the advantage of its being brought forward here, and that which induces my vote in support of it, is that it might be brought before the public of the State for discussion. I have no idea that this measure in its present form can possibly pass ; and the only advantage of putting it forward now is that the principle of skilled assistance in legislation may be suggested to the people in this State for discussion.

This bill proposes that principle. With the details we need not waste our time. Instead, therefore, of committing ourselves to any particular measure, I move that this measure be sent to the Legislature from the Bar Association without affirmative recommendation, and with a statement from the Association that this principle is offered to the Legislature and the people of the Commonwealth for discussion and subsequent adoption if it be thought desirable.

MR. SIMPSON, Philadelphia : Will the gentleman kindly tell me how the committee which presents it to the Legislature, could present it under such circumstances, if they did not say that they favor it. Shall they simply say, "Here is something to think about?"

JUDGE SIMONTON, Dauphin : It seems to me that we ought at least to say whether we favor the principle or not, even if we do not express an opinion as to the details. Do not let us send it to the Legislature without saying whether we approve of the principle or not. That would be my view of the matter.

The question being upon the motion of Judge McPherson, it was not agreed to.

THE PRESIDENT : The question recurs, then, to the recommendation of the bill.

(Calls for the yeas and nays.)

THE PRESIDENT : The roll is not yet complete, the report of the Committee on Membership has not been adopted or acted upon, and I suggest whether it would not be as well to take the vote in the ordinary way, and then, if anybody wishes to have his vote recorded, let him do so.

MR. SMITH, Philadelphia : I rise to make a parliamentary inquiry, and that is, whether the rules which govern this body make it necessary to call the yeas and nays when the same purpose may be served by adopting the suggestion of the Chair.

THE PRESIDENT : I do not recall that there is anything in the By-Laws giving the right to call for the yeas and nays ; if there is anything there on that point, I should be obliged if any member will call my attention to it.

MR. DIVELY, Blair: I think this is a deliberative body, and although I have taken no part in the discussion, I feel that I do not want my name to go there as voting for this proposition, and I ask that my vote be recorded nay.

THE PRESIDENT: There is no provisions in any of the By-Laws authorizing the calling of the yeas and nays.

MR. DIVELY, Blair: I only voice the sentiment of a great many who desire that their votes be recorded in such a manner.

MR. HOPWOOD, Fayette: Mr. Chairman, I would suggest as a way of facilitating this matter, that if anybody desires his vote to be recorded, he will give his name to the Secretary after the vote is taken. I am just as anxious to have my name recorded as anybody; I am not trying to dodge this matter at all, but let us stand up and be counted, and then give our names to be put upon the record if we wish.

THE PRESIDENT: I would like to call the attention of the Association to the fact that there are more than one hundred and seventy persons who have been recommended by the Executive Committee as members of the Association, but who must be accepted by the three-fourths vote of the Association before they can be admitted and become entitled to vote. Many of them are here, perhaps, and it would be somewhat of a hardship if they were excluded in that way from voting.

MR. LAIRD, Beaver: And they are taking part in this discussion.

MR. HOPWOOD, Fayette: I move that the vote be taken by yeas and nays.

Duly seconded.

MR. SNODGRASS, Dauphin: There is nothing in our By-Laws which entitles any member to call for the yeas and nays.

THE PRESIDENT: In the absence of anything in the By-Laws upon the subject it should be competent for the Association to determine how the vote is to be taken. I will rule that if the body itself chooses to order the yeas and nays upon the motion, the yeas and nays be taken.

The question being upon the motion of Mr. Hopwood to take the vote by yeas and nays, it was not agreed to.

The question being then put by the President upon the recommendation of the bill, and a division being called for, the ayes were 66 and the noes 44, whereupon the President declared the question carried.

The following gentlemen requested that their votes be recorded :

J. Sharpless Wilson, Beaver ; A. V. Dively, Blair ; Hon. John M. Greer, Butler ; L. B. Alricks, Dauphin ; Hon. D. W. Rowe, Franklin ; E. J. Little, Cambria—Nay.

MR. RHOADS, Philadelphia : I move that we now consider the recommendation of the Act regulating the Form, Service and Return of Process in actions of Summons, Scire Facias, Attachment and Capias ad Respondendum.

MR. BERGNER, Dauphin : I would like to ask the chairman of this committee one or two questions : The first is the exception in Section 1, that if there be an inability to serve, the return of an inability to serve may be made when requested by plaintiff at any time after the issuing of the writ, in which event the return day will be thirtieth day after the writ was issued. Suppose the plaintiff observes his inability on the thirty-first day after the writ is issued, when shall it be returned ? There seems to be no provisions for a return day in case of a writ not being served.

MR. SIMPSON, Philadelphia (Chairman Law Reform Committee) : The answer to that is perfectly plain. The sheriff can serve a writ within the time prescribed by the Act ; namely, three months, and he will, of course, so return it.

MR. BERGNER, Dauphin : There is no provision in the Act for that. After the writ is in the hands of the sheriff commanding him to make a service and he cannot make a service.

MR. SIMPSON, Philadelphia : Of course, he returns that he cannot make a service. That follows as a matter of course. You can require him to make a return, so as to get

out your alias writ, and take judgment on two returns of nihil habet, in cases where such judgment can be taken, the return day being thirty days after the issuing of the writ. That allows a second writ to go out after the expiration of thirty days, but not before, in cases where you can get judgment on two returns of nihil.

MR. BERGNER, Dauphin : Then, if I understand it, where the plaintiff discovers, after the thirtieth day, that he cannot have service, then he must wait until three months have expired ?

MR. SIMPSON, Philadelphia : No ; he can have it at once. This section was inserted to meet the contingency that you shall not have a writ in the sheriff's hands, and be put in the position that the writ shall not be returned. The sheriff can return it at any time, and you can compel him to return it to the thirtieth day after it issues.

MR. BERGNER, Dauphin : The Act does not say that.

MR. KOOSER, Somerset : How does the gentleman get over the difficulty which seems to me to be suggested by Section 2 ? The chairman of the committee asserts that after a writ had been recalled by the plaintiff, an alias writ may issue forthwith, which would be immediately after the expiration of thirty days ; yet Section 2 provides that no alias writ be issued until after the return day of the immediately preceding writ.

MR. SIMPSON, Philadelphia : You do not have to do it. Take Mr. Bergner's very suggestion ; suppose the writ is returned thirty-five days——

MR. KOOSER, Somerset (interrupting) : After the return day—you mean after the three months ?

MR. SIMPSON, Philadelphia : No, no ; by its very terms, the return day shall be fifteen days after service ; and, if not served, thirty days after the issuance of the writ.

MR. BERGNER, Dauphin : The difficulty I see in the Act is that it makes so much explanation outside. The second question is in reference to Section 4. This section provides that all writs of scire facias shall, in addition to the notice

required in the first sentence, notify and require the parties defendant therein to file their affidavit of defence, if any they have, in said office within said time ; that is, within the time between the service and the return of that scire facias. Why should that apply to scire facias ?

MR. SIMPSON, Philadelphia : That is the law to-day, except that the writ itself does not tell the defendant that he must do it ; that is the only change that that makes. If a scire facias is to-day issued against a man, and is served upon him, he does not know that he has to file an affidavit of defence, although by general law in fact he does have to.

MR. BERGNER, Dauphin : Does your writ of summons contain that provision ?

MR. SIMPSON, Philadelphia : No.

MR. J. MCF. CARPENTER, Allegheny : There is one difficulty that suggests itself to my mind. I may be mistaken about it, but under the Procedure Act, as we all know, and under the rules of court, there is a regulation in relation to filing statements, that is, to file an affidavit setting forth your cause of action. Section 4 provides that all such writs shall be directed to the parties defendant therein, shall notify and require them to enter a written appearance, either personally or by counsel. I would like to have attention to this for one moment, because I think it is a very important matter. I may be mistaken about it, but I think so. Under our practice, if the affidavit of claim as we used to call it, or statement, was not filed with the præcipe, you had a certain time after appearance entered to file your statement and give notice to the other side, and so on ; but now here is a provision interpolated which dispenses with the necessity of appearance by counsel, and allows a party to appear personally. You may not have filed your statement when you issue your summons. You have the personal appearance of a man who lives in Philadelphia but whom you served in Allegheny county, and you have no means of reaching him to serve him with notice of a statement having been filed, so as to take judgment by default,

because you have allowed him a personal appearance. You have taken away the necessity of counsel altogether.

MR. SIMPSON, Philadelphia : You cannot hinder a man entering a personal appearance. There is no such power in the Legislature of this State or anywhere else.

MR. J. MCF. CARPENTER, Allegheny : Under the law there is a very distinct power.

MR. SIMPSON, Philadelphia : Your rule of court can cover it, and those rules vary in different districts. For instance, in Northampton County, the provision is that the statement shall be filed ; and if there is not a place within the county mentioned in the appearance wherein service can be had, judgment may be taken. This Act does not attempt to interfere with that rule. The rules of court in Philadelphia County provide that if there is no place where service can be had, a copy of the statement shall be left with the prothonotary. This Act does not interfere with that rule. In Allegheny, you can provide by rule precisely in the same way, so far as a summons is concerned, to take judgment by default for want of any pleading. This Act does not touch in the slightest degree the powers of the court to make rules in every county of the Commonwealth.

MR. J. MCF. CARPENTER, Allegheny : It seems to me that we have entirely too much tinkering with this procedure business

MR. WILSON, Clearfield : As I read this Act in Section 1, the sheriff of any county can hold the summons in his possession for a period of forty-five days.

MR. SIMPSON, Philadelphia : It says all writs of summons may be served at any time ; it does not say he shall serve it at any time within three months of the date thereof.

MR. WILSON, Clearfield : So that it allows the sheriff of the county to hold that writ in his hands for three long months, and the plaintiff cannot compel him to move during any of that period ?

MR. SIMPSON, Philadelphia : If the gentleman will read Section 5, he will save his argument.



MR. WILSON, Clearfield : I say this law is a vicious law. It is striking down, so far as the country districts are concerned, what is the foundation of all law. A law is a rule of action, supposed to be precise, certain, distinct, so that we may know exactly what it is. Now, in the county of Clearfield, by Act of Assembly, we have specific return days. We have the first Monday of each month ; we have a return day on the first day of each term. We have the last Friday preceding the last day of each term. That has been extended to Clinton County, and some seven or eight other counties. I can issue a writ of summons to-day, twelve days before the return day on the first Monday of May, put it in the hands of the sheriff ; that sheriff must serve that writ and return it before that return day ; while under this Act, the sheriff may serve it. The Act does not say he shall serve it at any time within three months ; and the gentleman cannot get away from his language. That Act of Assembly would leave it in the power of a sheriff to interpret the Act as he sees fit, not as I, the plaintiff, or the attorney for the plaintiff, see fit. I say that, so far as that section is concerned, it is vague, uncertain and not clear, not precise ; and it is striking at a system in the country that we all consider as right and proper. At present the power is left with every lawyer in the country to issue his writ when he sees fit, and have it returned at a certain time ; but under this Act, the sheriff who has the writ may keep it for a period of forty-five days, and the gentleman cannot get away from the language of his section.

MR. RHOADS, Philadelphia : If the chairman of the committee will permit me to ask him a question—what is the object of putting that three months in Section 1 at all ?

MR. SIMPSON, Philadelphia : For the very purpose that a writ shall not be returned at the end of the month, because in one, two, three or four days the sheriff is unable to catch the man. It is provided, therefore, that he may serve it at any time within three months. The gentleman from Clear-

field, who did not like to be interrupted, because the Act was vicious, not because his argument was strong——

MR. WILSON, Clearfield: That was my opinion. We all have opinions, and come here to express them.

MR. SIMPSON, Philadelphia: The question whether the Act is a wise one is another matter; but I wanted to say that if the gentleman from Clearfield had looked at Section 5, which provides that all such writs shall be served, posted or published and returned by the sheriff at once, he would have saved much of his argument. If the gentleman can distort "at once" into forty-five days, his argument is unanswerable. If he cannot so distort it, his argument does not need any answer.

MR. WILSON, Clearfield: I would like the gentleman who just sat down to make plain to me how it is possible that in one section of an Act you may give to a party like the sheriff the privilege of serving a writ at any time within three months of the date thereof, and in another section say that he shall serve it at once.

MR. SIMPSON, Philadelphia: Because "at once" receives the construction any lawyer would give it, that it means as soon as it can be done. Every lawyer knows that a thing like that is entitled to a common-sense construction.

MR. J. McF. CARPENTER, Allegheny: "All such writs shall be served, posted or published and returned by the sheriff at once." Every lawyer knows some other things, and he knows that that cannot be done. The sheriff cannot serve those writs at once; you cannot hire deputies enough to serve them in Allegheny County upon the return days, when the writs are issued on the return day. Is that to be read "served, posted or published," in the alternative? Shall the sheriff say, "I cannot serve it to-day, I post it to-morrow, or publish it next day?" If we are here as a body of lawyers let us get at an Act that we can understand. And I say again, and I appeal to every lawyer here, that is active in the practice of the law and the issuing of writs, to say whether this Act does not add confusion to a well-settled principle of practice that we have all over this State now in regard to the

issuing of writs. We know now when writs are to be returned. We do not propose to say to the sheriff in one clause of the writ, "You have three months to do a thing." And then go and pay him \$10 to do it at once. He will say, "I cannot serve this writ at once; I only have half a dozen deputies; I cannot do it." It is impracticable. As one of the gentlemen said a moment ago, this is a vicious law, and it ought never to find a place on the statute books.

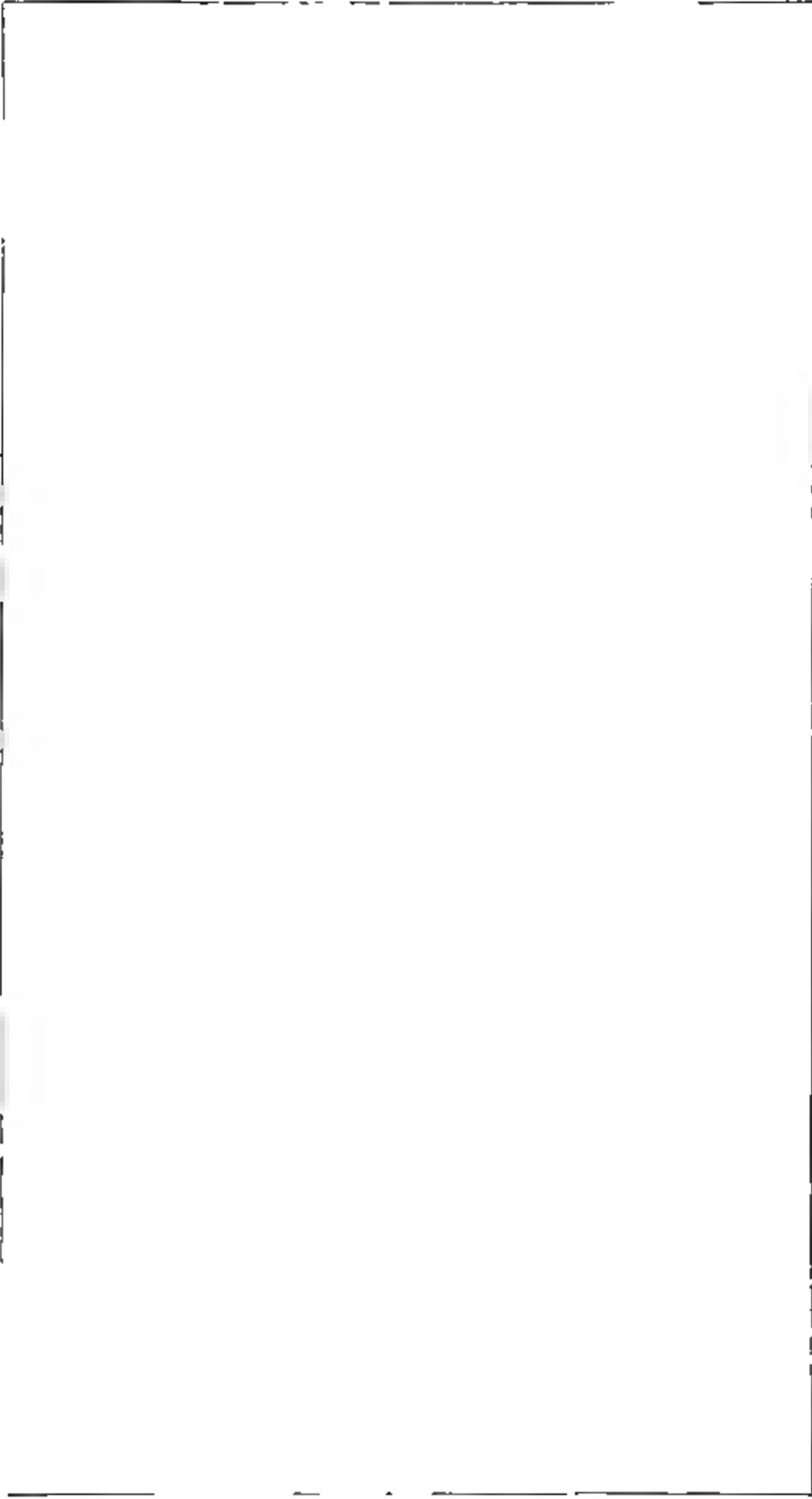
MR. DUFTON, Cambria: In many of our counties, as in Cambria, we have special return days. If this is intended as a general Act we ought to have a repealing clause. As the gentleman from Philadelphia has well remarked, this Act requires that the sheriff shall serve process at once in accordance with existing laws as herein modified. Does that mean to modify existing legislation by special Acts? Is this Act to repeal special legislation or is this to be a general Act merely?

MR. SIMPSON, Philadelphia: Will the gentleman read Section 1?

MR. DUFTON, Cambria: Section 1 says, "All writs of summons, scire facias, attachment and capias ad respondendum, issued out of any Court of Common Pleas in this Commonwealth, may be served at any time within three months from the date thereof, and shall be made returnable at the expiration of fifteen days from the service thereof, except as herein otherwise provided; but the return of an inability to serve may be made when requested by plaintiff at any time after the issuing thereof, in which event the return day shall be the thirtieth day after the writ was issued." Suppose you have a monthly return day; will that writ be made returnable to a monthly return day, or does it make its own return day? Is this general or special? If it is general legislation, we ought to have a repealing clause repealing these special acts.

But, in order to bring this matter before the Association, once for all, I move, Mr. President, that the bill be laid on the table.





### THE CITY HALL.

OCCUPIED BY THE SUPREME COURT OF THE UNITED STATES, FEBRUARY 7, 1791—AUGUST 15, 1800.

(FROM THE PHILADELPHIA MONTHLY MAGAZINE, JAN. 1790.)

MR. LITTLE, Cambria: I second the motion.

The question being upon the motion to lay the bill upon the table, it was agreed to.

MR. HENRY, Philadelphia: I move that we now adjourn.

Seconded and agreed to.

Adjourned.

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### EVENING SESSION

The Association met at 8 o'clock P. M., Vice President William M. Hayes in the chair.

MR. HAYES, *Vice-President*: Gentlemen, the first order of business is the report of the Committee on Legal Biography. Hampton L. Carson, Esq., of Philadelphia, will make the report.

MR. CARSON, Philadelphia: The Committee on Legal Biography beg leave to present the following report:

### REPORT OF COMMITTEE ON BIOGRAPHY

The Committee on Biography have the honor to report that they have carefully considered the scope and character of the work entrusted to their hands, and are of the opinion that the functions of the committee are of unusual importance and interest. It would be but a narrow view of our duty to confine ourselves to the collection of mortuary statistics relating to members of the profession. We must collect biographical data. The life of the law is, after all, the aggregate of the lives of the members of the profession, and any well-ordered system of compiling legal biographies, written from the standpoint of the antiquarian and the historian, as well as of the analyst, must necessarily form part of an interesting chapter in the development of jurisprudence.

It was Dr. Jowett, the great Master of Baliol, who once said to Mrs. Humphrey Ward:

We shall come in the future to teach almost entirely by biography, \* \* \* and we shall more and more put before our

children the great examples of persons' lives, so that they shall have from the beginning heroes as friends in their thoughts.

Apply this thought to the work of our own profession. It is quite clear that the common law as a system has a history. It represents constant growth. No one would be bold enough to assert that the body of immemorial customs prevailing among the semi-civilized Saxons of Alfred the Great's day was precisely the same as the laws of Edward the Confessor, although that monarch boasted that he was but restoring the purity of the Saxon law. A difference of two hundred years must have had its influence, and so, too, the laws of Edward the Confessor became in time modified and expanded in the days of John, one hundred and fifty years later. Principles themselves, fundamental though they be, change, expand, grow, develop, take on new aspects, are subject to new applications, and are extended by the judges to new conditions, in some instances amounting to judicial legislation. To really know the life of the law, we must know the lives of the men who administered it. We are all familiar with the importance of leading cases, and with the reasons urged for their study. A case represents a principle, but behind every case there stands a judge, and behind every judge there stands an occasion, and behind the occasion there stands the century that produced it. If we wish to measure fairly the full importance of a case, both as to what it is as a philosophic statement of the law, and, as a condensed storehouse of live principles—a potential source of influence for the future, destined to affect the most distant posterity—we must know not only who the judge was who delivered the opinion, but also the circumstances attending the particular occasion for the delivery of that opinion. Knowledge is not real if confined simply to the name of the judge; in analyzing the decision we necessarily analyze the brain that produced it. Ancestry, training, education, environment, produce certain qualities which, when brought into contact with certain conditions of society, produce a discharge of

force at a given point in place and time, which affects the development and progress of the law.

If cases are representative, must not the author of the decision in the case be equally so?

Cases themselves have an ancestry, a history, a dim beginning, then a fully developed manhood, and an influence upon the future. Such is true, also, of judges.

No one can fully understand the development of Pennsylvania jurisprudence without a profound study of such leading cases as *Ingersoll vs. Sergeant*, *Wallace vs. Harmstad*, *Lancaster vs. Dolan*, *et id omne genus*; and equally important are the lives of Tilghman, Duncan, Gibson, Black, Kennedy, Woodward and Sharswood. Let these names stand as examples of the rest.

The committee have now in preparation a list of carefully framed interrogatories to be addressed to leading members of the Bar in every county of the State, with a view of eliciting all the valuable information relating to the history of the law in each particular county, going back to the earliest days of the colony; interrogatories which, if fully answered, will give us not only complete and authentic data relating to the judges who held positions either for a short or a long period of time, and also of eminent practitioners of the law, who, while never occupying judicial position, contributed by their labors to the great work of expanding the empire of jurisprudence. These questions, if carefully answered, will throw light on the early history of Pennsylvania, the character of its settlers, the hardships they encountered, the problems they were called on to face, the manner in which they applied the principles of the common law to a new condition of affairs, and following the story down since the days of the Divesting Act to the formation of a separate State government, and the assumption by Pennsylvania of her place as a member of our Federal Union, will present in unbroken continuity a panoramic display upon which the eyes of all devout students of jurisprudence of the present generation can rest



with satisfaction, and which will prove of instruction and inspiration to our children.

A no less important part of the work of the Committee on Biography will consist of the collection of data relating to portraits, whether painted or engraved, of the men who have been eminent as judges and lawyers. It was Thomas Carlyle who, in a letter of May 3, 1854, addressed to David Laing, Esq., of the Signet Library of Edinburgh, expressed himself as follows :

First of all, then, I have to tell you, as a fact of personal experience, that in all my historical investigations it has been, and always is, one of the most primary wants to procure a bodily likeness of the personage inquired after ; a good portrait, if such exists ; failing that, even an indifferent if sincere one. In short, any representation, made by a faithful human creature, of that face and figure, which *he* saw with his eyes, and which *I* can never see with mine, is now valuable to me, and much better than none at all. This, which is my own deep experience, I believe to be, in a deeper or less deep degree, the universal one ; and that every student and reader of history, who strives earnestly to conceive for himself what manner of fact and man this or the other vague historical name can have been, will, as the first and directest indication of all, search eagerly for a portrait, for all the reasonable portraits there are ; and never rest until he have made out, if possible, what the man's natural face was like. Often I have found a portrait superior in real instruction to half a dozen written " biographies," or, rather, let me say, I have found that the portrait was as a lighted candle by which the biographies could for the first time be read, and some human interpretation made of them ; the biographied personage no longer an empty impossible phantasm, or distracting aggregate of inconsistent rumors (in which state, alas, his usual one, he is worth nothing to anybody, except to be as a dried thistle for pedants to thrash, and for men to fly out of the way of), but yielding at last some features which one could admit to be human.

This kind of value and interest I may take as the highest pitch of interest there is in historical portraits ; this, which the zealous and studious historian feels in them, and one may say all men just in proportion as they are " historians " (which every mortal is, who has a memory, and attachments and possessions in the past) will feel something of the same, every human creature, something. From that I suppose there is absolutely nobody so dark and dull and every way sunk and stupefied that a series of historical portraits, especially

of his native country, would not be of real interest to him; real, I mean, as coming from himself and his own heart, not imaginary, and preached in upon him by the newspapers, which is an important distinction.

This excellent and impressive statement fully illustrates the possibilities of such a collection of legal portraits of distinguished Pennsylvanians. If the series approach anything like perfection, we ought to be able to have a complete collection of pictures not only of the Chief Justices, but of the Associate Justices of our State, many of which are now lacking, or perhaps unknown. Whether they exist or not can only be determined after careful inquiry.

We have hanging upon the walls of the Supreme Court room in Philadelphia, and in the rooms for counsel, an interesting collection, so far as it goes, containing many, but not all, of the Chief Justices, and lacking very many of the Associate Justices. These places have been temporarily supplied by hanging up portraits of eminent members of the Bar who never held judicial positions. The collection is badly arranged, inasmuch as no chronological order has been observed. What should be done is to place in regular chronological succession the portraits of the Chief Justices, with a proper grouping of the Associate Justices occupying places under the respective Chief Justices, and then, as the eye would range from one corner of the room to the other, the mind would take in, in proper and orderly succession, the names and features of the great judges who are identified with certain periods of our legal development, and in this way unconsciously associated with cases themselves, and the names of the reporters whose volumes embodied them, a correct notion would be obtained of the true progress of the law.

Information of this kind to be useful must be orderly. No good can come from the contemplation of a mere ill-assorted mass; but when reduced to a system and subjected to the principles of chronological arrangement, what would otherwise be mere food for curiosity would become a definite means of systematic instruction.

What can be done with the material already accumulated in the rooms of the Supreme Court at Philadelphia, could be done upon the same plan at the various legal centres throughout the State.

An account of historic buildings, court houses, city halls and the like, will play a no less important part in this work. As an illustration of what is possible in this line, your committee beg leave to refer to the admirable address of Judge Pennypacker of the Court of Common Pleas No. 2 for the City and County of Philadelphia, which we herewith refer to as an exhibit.

When the Courts of Common Pleas of Philadelphia County removed from the neighborhood of the old State House on the south side of Chestnut Street near Sixth Street to their more commodious and splendid quarters in the City Hall at Broad and Market Streets, Judge Pennypacker sketched, in a most interesting way, the history of the vacated buildings.

Speaking briefly, the old building erected in 1787 at the southeast corner of Sixth and Chestnut Streets, Philadelphia, was known as Congress Hall. There John Adams presided over the Senate; there Madison and Fisher Ames contended with each other upon the bill to establish a national bank; there Washington was inaugurated for his second term; there John Adams was inducted into the Presidential office. In a similar building at the southwest corner of Fifth and Chestnut Streets sat the Supreme Court of the United States; there John Jay and John Rutledge and Oliver Ellsworth presided as Chief Justices; there Lewis, and Dallas, and Ingersoll, and Tilghman, Rawle, Dexter and Harper appeared to argue their causes.

Between them stands the Hall sacred to the Declaration of Independence and the Constitution.

Where in America can be found a similar group of historic buildings? Quaint in their simplicity, solid in their structure, thrilling in their associations, they speak each hour to the Americans of to-day. They recall the plainness, the

**THE CITY HALL.**

FROM PHOTOGRAPH, APRIL 1898.



strength, the endurance, the patriotism, the heroism and the sacrifices of our early days. Invested with a charm that clings not to the mouldering ruins of feudal castles, or the frowning prisons of the Doge, they speak not of tyranny, but of liberty. They are shrines and places of baptism where our fathers knelt and dedicated themselves and their children to the service of mankind.

There must be in each county of this State old structures associated with early Colonial days, or there may be, at least, lingering in the memories of aged men, recollections of structures long since levelled to the earth, which were associated with the administration of justice and the execution of the law.

We are still a young country, but unless our hands are stretched forth in time to seize the rapidly-vanishing traces of our early days, much useful and valuable information will perish.

Therefore your committee, in connection with their interrogatories relating to information concerning men, have also embodied a series of questions relating to court-houses, or buildings used for the purposes of a court-house.

The committee have in preparation a series of biographies relating to men who have passed away within the last year, whose lives are worthy of commemoration, and whose labors were such as to impress themselves upon the body of our jurisprudence.

Mr. Richard Vaux, of Philadelphia, was one who signed the call for the convention which organized the Pennsylvania Bar Association, in which he took a keen interest. It was death alone which forestalled his perfecting his membership.

Hon. Grier C. Orr, of Armstrong County, was a member of the Pennsylvania Bar Association, and as his is the first death among our members, it is proper that a suitable memorial be prepared, and the committee now have it under consideration.

The committee would not limit its labors simply to the preservation of data relating to the lives of those who were

members of their Association. The life of such a judge as the late Joseph Allison, of Philadelphia, for instance, should not go unrecorded—a man who for forty-five years had earnestly and zealously devoted himself to his duties with a degree of benefit to the community which it is difficult to overestimate.

In conclusion, your committee would bespeak the earnest and active co-operation and support of every member of this Association, and invite sympathy, criticism and suggestion.

HAMPTON L. CARSON,  
*Chairman.*

G. B. KULP,  
C. LARUE MUNSON,  
JAMES I. BROWNSON, JR.,  
DANIEL K. TRIMMER.

MR. HAYES, *Vice-President*: You have heard the report of the Committee on Legal Biography; what action shall be taken upon it?

MR. RHOADS, Philadelphia: I move that the report be accepted.

Duly seconded and agreed to.

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MR. HAYES, *Vice-President*: The report of the Committee on Legal Education is next in order.

MR. SNODGRASS, Harrisburg: On behalf of the Committee on Legal Education, I have the honor to submit the following report:

### REPORT OF THE COMMITTEE ON LEGAL EDUCATION

The Committee on Legal Education met, at the call of the Chair, on Thursday, December 19, 1895, at the rooms of the Lawyers' Club in Philadelphia. After a full discussion of the scope of the committee's work, and a careful consideration of plans for making its work effective, it was determined to appoint two sub-committees, one consisting of seven

members, to be a Committee on Curriculum, and the other consisting of five members, to be a Committee on Uniformity. The Committee on Curriculum was directed to formulate a course of preliminary study and a system of preliminary examinations for the registration of students of law, a curriculum of study for admission to the Bar and a system of final examinations—the end in view being the securing of uniformity in these subjects in all the judicial districts of the Commonwealth. The Committee on Uniformity was directed to begin its work at the point at which the work of the Committee on Curriculum ceased, its duties being of an executive character, having to do with the actual adoption of the recommended curriculum by local boards of examiners and the local judiciary.

The Committee on Curriculum was accordingly appointed and has made a report to the Committee on Legal Education which has been adopted as the report of the whole Committee upon the subject to which it relates. It is annexed hereto, and is submitted as a part of this report.

The Committee on Uniformity has deemed it expedient to make no organized effort to secure the adoption of the suggested standards until after the present meeting of the Association, for it is largely upon the intelligent co-operation of the members of the Association, who will participate in the discussion and consideration of this report, that the Committee on Uniformity must depend for the successful prosecution of its work. As a preliminary step, however, the Committee on Uniformity has distributed copies of the report of the Committee on Curriculum as widely as possible throughout the Commonwealth, in order that the discussion of the report may be as intelligent as possible, and in order to eliminate as far as possible criticisms which do not represent the result of careful and mature deliberation. If it is the pleasure of the Association to continue the Committee on Legal Education in existence, it is the design of that committee to authorize the Committee on Uniformity to go forward with its labors, and to do whatever in its judgment is desir-



able to secure the adoption of the standards upon which the Association finally determines.

Your committee ventures to express the hope that each of the members of the Association, both in debate and at the time of the voting, will bear in mind that no great reform, like the one to which the Association has pledged itself, can be successfully carried through if each individual withholds his co-operation until he feels himself entirely satisfied with the measure proposed for adoption. It is obviously a case in which all must unite upon certain broad and general principles, yielding personal preferences with respect to details, and striving conscientiously, in the interest of uniformity, to secure the adoption of any report which is in substance satisfactory.

As a result of its labors and investigations, your committee is greatly impressed, not only with the existence of a need for reform in the standards and methods of legal education, but also with the belief that the reform is at this time possible if this Association will pledge itself to the promotion of the interests of the cause.

ROBT. SNODGRASS,

*Chairman.*

GEORGE WHARTON PEPPER,

*Secretary.*

#### REPORT OF THE SUB-COMMITTEE ON CURRICULUM

The sub-committee of five, appointed to formulate a curriculum of study for admission to the Bar and a system of preliminary and final examinations suitable for adoption throughout the State of Pennsylvania, respectfully reports:

I. Your committee, in conducting its investigation of the important subject committed to it, has been confronted with four distinct problems for solution. The first of these relates to the scope of the preliminary examination for registration of students of law. The second concerns the length of the course of legal study between the time of registration

and the time of final examination. The third is the important problem involved in the mapping out of a suitable course of legal study to be pursued by candidates for final examination. The fourth has to do with the matter of final examinations—the intervals at which they should occur, and the way in which they should be conducted. Your committee, after anxious consideration, has reached a solution of each of these problems, and begs to submit herewith a detailed report of the conclusions reached, and the reasons upon which they are based. The report upon these specific problems is followed by a statement of the sense of the committee in regard to three collateral but important subjects: (1) the advisability of requiring the student to spend a portion of his time in the office of a practising lawyer; (2) the feasibility of admitting to the Bar, without examination, those who are the holders of law school diplomas; and (3) the recommendation of a general course of reading, in connection with the course of study which the student is required to pursue. The report concludes with a summary statement of the results of the committee's deliberations, which includes a scheme of preliminary examination and a curriculum of study to be required of candidates for admission to the Bar.

### 1.—Preliminary Examinations

A report upon this subject naturally involves two distinct considerations. First, What shall be the subjects upon which the student is required to prepare? Second, How shall the examination be conducted?

(a) Upon the first point, the committee is of opinion that the candidate for registration should be thoroughly prepared in those subjects which are required for admission to the freshman class of average colleges of reputable standing. Your committee understands that these subjects are: (1) The English Language and Literature; (2) Outlines of Universal History; (3) The History of England and of the United States; (4) Mathematics, including Arithmetic,

Algebra to Quadratics, and one Book of Euclid; (5) The Latin Language and Literature; (6) Modern Geography. It is to be noted that a conference committee, representing Harvard, Yale, Pennsylvania, Cornell, Columbia and Princeton, has recently agreed upon a system of uniform requirement for admission to the Freshman Class. The standard thus fixed will doubtless be generally adopted.

The course in the English Language and Literature is of vital importance. The student must be familiar with the English Grammar, and with spelling. He must know the outlines of the history of literature both in England and in the United States. The course must go further, however, and include a reading and study of selected works of particular authors, so that the student will be prepared for an examination which is more than a mere test of memory. The course should be so moulded that if a student is questioned about Shakespeare he must be ready to prove that he has read at least one of the plays, and to give an intelligent account of it. If it relates to Milton, or Pope, or Gray, or Wordsworth, or Tennyson, the student must be prepared to give the characteristics of the epoch for which each name stands. Your committee does not mean to contend for a technical training in literature, but merely to insist that a man should have learned, before he begins to study law, that in every department of human activity there is a great man in each age who impresses himself upon his generation and gives to that age its characteristics. The student will then be prepared, when he approaches the study of the law, to grasp the significance of the names of Coke, of Hale, of Hardwicke, of Mansfield, of Eldon, of Marshall, of Gibson, of Miller and of Bradley. Your committee is of opinion that if such a course of preliminary training is insisted upon, it will, in almost every case, result in stimulating in each student a desire to continue and to broaden his course of reading, and that it will result in making the recommendation of a general course of reading, in connection with the course of legal study, something more than a mere "counsel of perfection."

In regard to history, your committee is of opinion that the student should have that familiarity with the outlines of Universal History which may be gained from the careful study of some standard historical sketch. A far more searching requirement is recommended in regard to the History of England and of the United States. The course should be designed to lead up to an examination which shall be something more than a mere time-table examination on names and dates. It should impart to the student an ability to answer questions in regard to the *significance* of historical events, and the political reasons which have led to wars and treaties. Those who have had experience as members of boards of examiners have met with many students who could give the names and dates connected with every incident in our Civil War, but who utterly broke down when asked what the war was about, and what were the political, social and constitutional issues upon which the North and South went to trial. Your committee believes that the importance of a thoughtful and intelligent study of the History of England and of the United States should be emphasized not only by general statements of the importance of such study, but by requiring the student to prepare himself for examination upon the political aspects of the history of the English-speaking race, and by stipulating that he shall have read such a book as "Johnston's American Politics."

The importance of mathematical study should not be overestimated. If by a mathematical training a student has not learned to reason exactly, he cannot be expected to grapple with the more exact branches of our law—the law of future interests, the rule against perpetuities, common law pleading and equitable trusts. A thorough grounding in arithmetic should be insisted upon. Your committee, however, inclines to the view that if the student desires he should be permitted to substitute logic for algebra and geometry. In order that logic may be an equivalent for these subjects, the course should obviously be a thorough one, leading up to a searching examination.

The course in Latin should include a thorough drill in the Latin grammar, and in Arnold's Latin Prose composition. The student must have read four books of Cæsar, and either six books of the *Æneid* or the four orations of Cicero against Cataline. There are reasons in favor of permitting the student to offer as a substitute for Latin some one modern language, say either German or French; but upon the whole your committee believes that the universal requirement of Latin is to be preferred.

The requirement of modern geography needs no justification. The student should be given to understand that he is liable to be questioned with more than ordinary minuteness upon points of geography involved in questions of current interest and importance; as, for example, the exact geographical description of Behring Sea, or of the South American countries directly or indirectly concerned in the Venezuela matter.

(b) As respects preliminary examinations, the committee is of opinion that they should be principally written examinations, supplemented by orals if the examiners so desire. It is only by means of questions carefully prepared and deliberately considered that a fair examination can be held. Examiners cannot properly discharge their duty if they leave the formulation of questions to the inspiration of the moment. If this is done, the questions will be ridiculously easy or unreasonably difficult. The questions should be framed with as much care as would be used in framing a cross interrogatory designed to bring out all that the witness knows upon the point under investigation. The student should not be permitted in his answer to cloud the air with a multitude of words. He should be held down to the very question which has been submitted to him. If the question has been properly prepared, he will not be entitled to ask to have it explained, and he ought to stand or fall by the answer which he gives unaided. In the judgment of your committee every examination should include the writing of a composition or essay by the student, to test his ability to express himself

in good English. It is not unreasonable to prevent a student from registering who fails to satisfy this test of his preparation, even if upon other heads he has shown himself to be possessed of much technical information. Your committee cannot urge too strongly the great importance which it attaches to this feature of the examination.

Your committee is of opinion that graduates in arts or science, of colleges of recognized standing, should be permitted to register without examination. It is not desirable that the question of the standing of the several institutions of learning should be left for determination to each of the local boards of examiners. If this were done, a diploma would be recognized in one judicial district which the committee in another would refuse to receive. Your committee is of opinion that the Committee on Legal Education of the Bar Association should in each year promulgate for the ensuing year a list of the colleges whose diplomas will be accepted in lieu of a preliminary examination. The importance of a definite rule upon this subject is obvious. It is not proper that the acceptance or rejection of a diploma should be left to the decision of the moment when the Board of Examiners has assembled and their determination is liable to be influenced by the length of the list of applicants for examination, and the amount of time which is at their disposal for the discharge of their duties. The student is entitled to know in advance whether his degree entitles him to registration, or whether he will be required to submit to examination.

In fine, your committee is of opinion that a candidate for registration should not be permitted to register unless (having been subjected to examination) he answers satisfactorily at least sixty per cent. of the questions submitted to him, and not then if he proves deficient in the writing of such an essay or composition as was suggested above.

## II. Course of Legal Study

Your committee is of opinion that much might be said in favor of the abolition of a time requirement of legal study

between the date of registration and final examination. In law schools the course must be of a prescribed length in order that the students may be arranged in classes, and in order that instruction may be given systematically. No such consideration is present in the case of a student who is pursuing his studies alone, or with the aid of a preceptor, and it should seem only fair to permit him to come up for examination whenever he considers himself fitted to pass. At the same time your committee recognizes that the requirement of a fixed period of legal study has some well-defined advantages. If a student is earnest and industrious, it is quite certain that he will apply to advantage all the time required by a reasonable rule upon this subject, and he will find two or three years none too long for a grounding in the principles of our law. If, on the other hand, the student is a less thoughtful and a less admirable man, either the full time required by a fixed rule will be necessary for his preparation, or he will be tempted to overestimate his capacity and make a succession of fruitless attempts to pass at shorter intervals, thus increasing the work of the examiners and doing himself a serious injury. Your committee therefore favors a fixed period of legal study. While recognizing that under existing conditions two years would be a sufficient time within which to prepare for final examination, your committee believes that the course of study indicated below requires that three years should be devoted to it by the student. It is understood, however, that "three years" means three academic years, as that term is used in a college or law school. Thus, if a student registers at the end of the summer vacation in 1896, he would be qualified to present himself for final examination in the spring of 1899.

### III. Curriculum of Legal Study

After a careful consideration of the problem connected with the course of study for admission to the bar, your committee has reached the conclusion that the *subjects of requirement* may, with advantage, be designated, but considers it

unwise to fix the course by reference to particular text-books. The literature of the law is constantly changing, and it often happens that new publications are better adapted to the student's needs than those that have theretofore been recommended to him. It seems wise, therefore, for the Committee on Legal Education to put forth a list of recommended books connected with the several courses of study, but to revise the list every year in order that it may be kept abreast of the times. Your committee, accordingly, invites your attention, first, to the course of study, and second, to the literature of those courses.

#### A.—Courses of Study

*First Year.*—Your committee is of opinion that the course of study for the first of the three years should include the following subjects: (1) Elementary Law; (2) a general survey of the development of so much of the common law as is represented by the first two books of Blackstone; (3) Contracts; (4) Torts; (5) Crimes; (6) Common Law Pleading.

A course of reading in the elements of law is particularly desirable. The student at the outset should become familiar with theories of the nature and source of law, the development of society, the grand divisions of the law and the relation which they bear to one another. Of course, the reader of the introduction to Blackstone's Commentaries gains some information upon these points, but many of the theories to which Blackstone gives his adherence have been abandoned in modern times, and it seems desirable to require of the student a preparation based upon the result of modern thought and research.

The student may with advantage begin his acquaintance with the common law by reading the first two books of Blackstone. It must not be forgotten, however, that there is a danger in confining the student too closely to Blackstone in this connection, because he is apt to look upon the work as a codification of law, and to forget that our legal system is



essentially a growth and development which demands historical study. As the primary feature in its history is the law of real property and the feudal system, your committee is of opinion that an elementary work upon the history of the law of real property may with advantage be placed in the hands of the student of Blackstone; for it is believed that by using the two in conjunction the most beneficial results will be attained.

A study of the principles of contract is recommended for the first year. The student should become familiar with the nature and scope of the contractual obligation, and should be grounded in the fundamental doctrines of consideration, offer and acceptance, etc., etc., in order that he may be prepared at a later stage of his course for a study of such special developments of the law of contracts as Bills and Notes, the Contracts of Carriers, Insurance, etc., etc.

The study of torts may with advantage be prosecuted in the first year. The law of torts as a whole presents no great difficulties to the student, and it is of such fundamental importance that no doubt can be entertained as to the expediency of assigning it a place in the early part of the curriculum.

The same remarks apply to the study of the elements of criminal law. Side by side with property, contracts and torts, this branch deserves to stand as one of the foundations of the student's course of legal study.

The importance of the study of common law pleading is admitted by all, and your committee is of opinion that the study should be undertaken in the first year, as at least an elementary knowledge of it is necessary to an adequate understanding of much of the law of contracts and of torts. A study of code pleading, or of other modern developments of the law of procedure, must always begin with a study of the common law system of pleading, and your committee feels that it is voicing the sentiment of the Bar when it insists, not only upon the practical importance, but upon the educational value, of a sound preparation in this subject.

*Second Year.* Your committee is of opinion that the course of study for the second of the three years should include the following subjects: (1) Property; (2) Equity; (3) Evidence; (4) Sales; (5) Partnership; (6) Quasi-Contracts; (7) Agency.

Upon the course for the second year as thus mapped out, your committee deems it unnecessary to comment—unless, indeed, a justification is needed for including the course on Quasi-Contracts in the list of subjects of study. Upon this point it may not be improper to remind the Bar that the law of Quasi-Contracts, so called, is nothing more nor less than that branch of the law which has to do with the obligations designated by our older writers as the “contract implied in law.” It is obvious that nothing but confusion can result from a classification which couples the contractual obligation resulting from a meeting of minds upon the one hand, with the obligation which is wholly independent of a meeting of minds on the other. It is, of course, immaterial whether the evidence of the meeting of minds takes the form of the express statements or declarations of the parties, or of facts from which the existence of an intention to contract may be referred. In either case the resulting obligation is a contractual obligation, whether we call it an express contract or an implied contract. But when we turn to that important department of the law where there is a recognized obligation which may be enforced in a contractual action, but where the circumstances preclude the existence of a contract express or implied, it is obvious that we have (so far as substantive law is concerned) crossed a boundary line between two departments of jurisprudence and that we must subject the field into which we have come to independent examination and study. Your committee understands that it is to this obligation independent of contract (which in old times was improperly called “contract implied in law”) that modern writers have given the name of Quasi-Contract; and your committee is impressed with the importance of directing the student’s attention to the wide distinction which separates the one branch of law

from the other, and to the important results which follow from the difference.

*Third Year.* Your committee is of the opinion that the course of study for the third of the three years should include the following subjects: (1) Property (continued); (2) Constitutional Law; (3) Corporations; (4) Bills and Notes; (5) Domestic Relations; (6) Practice in Pennsylvania; (7) Pennsylvania statutes on practice and the organization and jurisdiction of courts; (8) Decedents' Estates; (9) Pennsylvania cases on Replevin, Ejectment and Assumpsit.

#### B.—The Literature of the Courses

Your committee has already expressed a belief that a list of recommended books should be made the subject of a constant revision, in order that advantage may be taken of all that is valuable in new publications. Subject to this general statement of policy, the committee submits its suggestions with respect to the works which a student may use with advantage.

In making its suggestions your committee desires to call attention to the collections of cases for the use of students, which have been published during the last few years. The importance of these publications it is difficult to over-estimate. As a basis of class-room work they are being used in the leading law schools of the country, in many instances to the exclusion of text-books. Entirely independently of such a use of them, they will be found invaluable as adjuncts to the text-books and treatises, for they save the time which the student would otherwise spend in hunting for cases in the original reports, and, in a multitude of instances, they put within the reach of a student, cases which would otherwise be inaccessible to him on account of the limited library facilities to which he has access.

In this connection, the committee calls attention to such products of ripe scholarship as Gray's Cases on Property, Ames' and Smith's Cases on Torts, Bigelow's Cases on Torts, Thayer's Cases on Evidence, Thayer's Cases on Constitutional

Law, Ames's Cases on Bills and Notes, Ames's Cases on Trusts, Ames's Cases on Pleading, Williston's Cases on Sales, Keener's Cases on Quasi-Contracts, McClain's Cases on Carriers, Huffcutt's Cases on Contracts, and Cummings' Cases on Private Corporations. Such collections of cases are, so to speak, new features of our legal literature; and your committee considers it proper to direct the attention of students and Bar to the important place which they are adapted to fill.

The following text-books, case books and treatises are recommended in connection with the several courses outlined above :

*First Year.*—Markby's Elements of Law, Sharswood's Blackstone, Digby's History of the Law of Real Property, Cox's Common Law, Anson on Contracts, Williston's Cases, Huffcutt's Cases, Bigelow on Torts, Bigelow's Cases and Ames & Smith's Cases, May on Criminal Law, Stephen on Pleading, Ames's Cases.

*Second Year.*—Challis, Washburn or Williams on Real Property with Gray's Cases and Gray on Restraints on the Alienation of Property; Bispham on Equity and Laussatt's Essay on Equity in Pennsylvania (reprinted in Vol. I: Reports of Pennsylvania Bar Association); Best on Evidence (Chamberlayne's Edition), Thayer's Cases; Blackburn or Benjamin on Sales, Williston's Cases; Parson's (Theophilus) on Partnership; Keener on Quasi-Contracts, Keener's Cases; Mechem on Agency.

*Third Year.*—Gray on the Rule against Perpetuities; Rawle on Covenants for Title, and Mitchell on Real Estate and Conveyancing in Pennsylvania; Cooley's Principles of Constitutional Law, Thayer's Cases; Taylor on Private Corporations, Cummings' Cases; Bigelow on Bills and Notes, Ames's Cases; Schouler on Domestic Relations; Troubat & Haly's Practice in Pennsylvania, or Brewster's Practice; Lewis' "Courts of Pennsylvania in the Seventeenth Century" (reprinted in Vol. I; Reports of Pennsylvania Bar

Association); Trickett on Liens in Pennsylvania; important Pennsylvania Statutes.

The Pennsylvania Statutes contemplated in the outline of the third year course are left for selection to the Local Boards of Examiners, who are requested to set forth for the information of students in their respective districts a list of the titles in Purdon's Digest, and in Pepper & Lewis's Digest upon which the candidates for examination are expected to be prepared.

#### **IV. System of Final Examinations**

Under this head it is proper to consider (*a*) the time or times at which final examinations should be held, and (*b*) the method of conducting them.

(*a*) The times at which final examinations should be held.

The custom which at present prevails throughout the Commonwealth is to hold a single final examination at the end of a student's course of study, and to admit him or reject him in accordance with the result of the test to which he is then subjected. Without commenting upon the wisdom of such a custom in connection with the requirements for admission which have been deemed sufficient in the past, your Committee is of opinion that upon the basis of the course of study recommended in this report, better results will be reached by permitting the student to come up for examination at intervals during his course, and thus to dispose of the several subjects of requirement by degrees. The strain upon the student will thus be reduced to a minimum, the time consumed in conducting thorough examinations upon each of the courses will be more conveniently distributed, and the student's preparation in each course will be more thorough; for he will be enabled, for the time being, to devote his undivided attention to mastering a few subjects instead of being compelled to diffuse his energies in the attempt to prepare himself upon many. Your committee is of opinion that final examinations should be held in each judicial dis-

trict twice in each calendar year. One of these examinations should be held in June, and this should be the principal examination at which all candidates should be required to present themselves. The second examination (to be held in December) should be conducted for the benefit of those who have been conditioned in the examination of the preceding June. No new candidates should be permitted to present themselves for examination at the December term, unless they are holders of law-school diplomas, as hereinafter explained. At the June examination, students should be permitted to present themselves for examination in the subjects of study allotted to the academic year then drawing to its close. It does not seem feasible to subdivide the years and permit students to come up for examination at shorter intervals, during the autumn, winter and spring, because of the danger that under such a system the student's preparation will be fragmentary and disjointed, and the advantages incident to the contemporaneous study of a reasonable number of courses will be lost. On the other hand, it does not seem fair to the student who has failed, wholly or in part, at the June examination, to compel him to lose a year, or to bear the burden of a double examination in the ensuing June; and accordingly your committee has determined to recommend the holding of the December examination, as explained above, for the benefit of candidates who have theretofore been found wanting, as well as to afford an opportunity to law school graduates to present diplomas granted subsequently to the examinations held in the preceding June. It is to be observed that the provisions here suggested in regard to the division of the course into years are for the convenience of the student. Any student who prefers the old-fashioned system may elect to take all his examination at the end of his course.

(b) Method of conducting examinations.

Your committee is strongly of opinion that the final examinations like the preliminaries should be in the first instance written. They should be held on successive days

during an examination week, and the student should be allowed four or five hours in which to study each examination paper, and write out his answers. As a rule, not more than one examination should be held on each day. Students who answer satisfactorily sixty per cent. or more of the questions upon a given course should be permitted to pass in that course without further examination. Students who fail to answer fifty per cent. of the questions should be conditioned without further examination. Students whose percentage of satisfactory answers ranges from fifty to sixty per cent. (students, in other words, whose status is doubtful) should be required to pass an oral examination, in order that the examiners may have a further opportunity to determine whether they should be passed or conditioned.

Your committee of course recognizes the fact that the efficacy of any system of examinations depends largely upon the spirit in which the system is put into operation by those who are charged with the duty of conducting the examinations. Your committee, however, believes that much of the lack of thoroughness, and of the lack of uniformity in the conduct of final examinations throughout the Commonwealth, has been due more to the absence of a definite theory upon which to conduct the work of the Local Boards than to any want of ability or interest upon the part of the Examiners themselves. Your committee indulges the hope that if this report is in substance adopted, and is put into the hands of the Committee on Uniformity for promulgation, the judges in the several districts, and their appointees upon the Boards of Examiners, will find that it represents a coherent and carefully matured plan of work, from a faithful following of which nothing but good results can ensue. The committee has felt some hesitation in recommending any plan which involves an addition to the labors of the local Boards, and it is for this reason that it has been thought proper to report in favor of the preparation in each year, by representatives of the Committee on Legal Education, of standard examination papers on each of the courses included in the curriculum, which papers

can be transmitted sealed to the Secretary of any local Board of Examiners which may desire to make use of them in the annual examination. A single set of papers for each annual examination would answer every requirement; because it is part of your committee's recommendation that the examinations should be held at the same time all over the Commonwealth, thus avoiding the danger of permitting the candidates in any district to gain access to standard examination papers, which might otherwise have found their way previously into the hands of students in another district. Your committee is of opinion that if a week is thus set apart for examinations, and if one member of the local Board is detailed to preside at each of the written examinations during the week, there will be no increase of work for the members of those Boards which make use of the standard examination paper. By thus detailing the members of the local Boards to superintend the several examinations better results will be attained in the criticism of the students' answers than under the present system, for the committeemen who are put in charge of the examination in a given course will have their attention especially directed to that subject of study, and they will, in a sense, become specialists therein. As the system recommended in this report greatly reduces the number of examinations held in the course of the year, as compared with the system which now prevails in many counties, the committee suggests to the courts the importance of lengthening the term of service of members of the local Boards. A member of the Bar who serves for a term of five years is better able to familiarize himself with the system of study and examinations than a man who serves for a year only. Greater stability will be secured by longer terms, and a permanent policy upon the part of the Board will become possible.

Your committee anticipates that men will be found in each district who will oppose the adoption of the plan outlined in this report, either from inherent conservatism, or a dread lest the autonomy of the local Bars is to be destroyed, or a belief that they could suggest a better plan. With such



men it will be the duty of the Committee on Uniformity to deal. It is anticipated, however, that few of the judges will be found among their number ; and if the judges in the judicial districts throughout the Commonwealth approve a plan put forth by the Bar Association, the practical success of the plan will be assured. It may not be out of place to observe in this connection that the advantages of harmony of action upon the part of the Bar of the Commonwealth are so great, and the disadvantages which result from a lack of uniformity of requirement are so serious, that it might almost be said that it is more expedient that the system of study and examinations should be settled throughout the State than that it should be well settled. This principle should be borne in mind by those who are tempted to criticise your committee's recommendations ; although it goes without saying that your committee believes that the system herein advocated will, upon the whole, be found to be better adapted to the present needs of the profession than any other that can be devised at this time. In some of our sister Commonwealths a central Board of State Examiners has been erected, which conducts all the examinations for admission to the Bar. The examiners are specialists—men who make the conduct of examinations their profession—and their compensation is derived from a moderate examination fee (usually \$5.00) charged to each candidate who presents himself. This system has been found productive of admirable results, and your committee incline to the opinion that it represents the ideal solution of the problems with which the profession is confronted. It is believed, however, that the system advocated in this report will command the support of many whose opposition to a more radical measure would insure its defeat ; and it seems to be a reasonable view to hold that the profession should be given a practical experience of the advantages of a uniform system voluntarily adopted, before they are asked to submit to a legislative enactment abolishing a state of affairs to which they have been accustomed, and instituting an order of things with which they have had no experience.

## V. General Recommendations

### A.—Apprenticeship in the Office of a Practicing Attorney

After giving to this subject mature consideration, your committee has come to the conclusion that the office of the modern lawyer is not, as a rule, a place where legal instruction can, with advantage, be obtained; and that it is inexpedient to require a long term of service as an apprentice to an active practitioner. Your committee recognizes the fact that an increasing number of law students are seeking the instruction afforded by law schools, and is of opinion that to require a long clerkship is to discriminate against law school study, inasmuch as the period of clerkship must, in many cases, be added to the time required for obtaining the law school degree. The work in law offices formerly done by students is now, to a great extent, done by stenographers and clerks, and the student has an extremely limited opportunity to familiarize himself with the way in which the actual practice of the profession is conducted. On the other hand, there can be no doubt that a student who is thoroughly grounded in the theory of the law and the principles which underlie its practice, can, by consistent application, familiarize himself with the details of practice in a six months' course of study. If a young man, who has graduated from a law school, or who has all but completed his course of private study, devotes himself for six months to a study of practice in the jurisdiction in which he expects to begin his professional life, there can be little doubt that he can gain, in this comparatively short time, as thorough a knowledge of the subject as will be gained by mere attrition and observation during a period of three years in which he is striving to master theory and principle amid the distractions of office work. Your committee accordingly reports in favor of requiring a clerkship of six months only as a condition precedent to admission to the Bar; but with this suggestion is coupled the recommendation that students be given to understand that the results of their clerkship will be actually tested upon exami-

tion by requiring them to prepare the more ordinary papers and documents met with in practice; as, a declaration or statement, affidavit of defence, a brief bill or answer in equity, a bond and warrant, a deed of bargain and sale, a lease, etc.

Your committee has not forgotten that the general observations which have been made in regard to office registration have only a limited application to some of the counties of the Commonwealth. In many places the office of the practising attorney is still the training place for admission to the Bar. It is to be observed that the recommendation of a six months' clerkship in no way conflicts with such a system. A student in such a county will spend his whole course in the office. It is for the benefit of those who are driven from the office to the law school that the term of required apprenticeship is reduced to a minimum.

#### **B.—The Credit to be Given to a Law School Diploma**

Your committee has given anxious consideration to the question whether or not law school diplomas should be accepted in lieu of final examinations for admission to the bar. After weighing the affirmative and negative considerations it has been deemed expedient to report in favor of admitting the student upon his diploma, provided it has been granted by a law school in which three years' study is required for the degree, and provided further, that the rule as to six months' clerkship and the special examination upon the results of the clerkship, has been complied with by the applicant. In other words, the diploma of an accepted law school would relieve the holder thereof from all examination except the examination in the drafting of legal documents, etc., as already explained. As it might be impracticable in many instances for a student registered in a law school to serve his six months' clerkship during the law school course, your committee inclines to the opinion that students who graduate from law schools in the spring or early summer of a given year should be permitted to present their diplomas and apply for the practice examination at the session of the board

in the following December, thus enabling them to satisfy the rule in regard to clerkship with a minimum of loss of time. If a law school graduate were to fail in the practice examination, he should be permitted to apply for re-examination at each semi-annual session of the board after his failure, until he succeeds in passing, or is notified by the board that he is in their judgment unfit for admission.

#### C.—Recommendation of a General Course of Reading

Your committee is unanimously of opinion that the student of law should be constantly and forcibly reminded of the importance of continuing and broadening the course of reading which he is required to pursue in preparation for registration. The committee has already expressed in this report the hope that the preliminary requirements in the domain of literature will, if conscientiously insisted upon, stimulate in each student a love of reading for its own sake. Unless the preliminary requirement has some such result it will accomplish only a portion of its purpose. In order to emphasize the importance which should be attached to literary attainment, your committee believes that a general course of reading may profitably be recommended, and suggests that no student be permitted to take his final examination until he has certified to the examiners that he has read the books contained in the recommended list, or their equivalent. Where a student certifies that he has read books the equivalent of those recommended, he should be required to specify them with particularity. It is not deemed expedient to insist upon an examination in general literature at the time of admission to the bar, in addition to the examination preliminary to registration; but your committee believes that much good will be done by annexing the sanction of a certificate by the student to the general recommendation of the association, for a large proportion of applicants for admission will, undoubtedly, be unwilling to make the suggested statement until they have actually done the work which it represents.

The following is the list of works which, in the judgment of the committee, each applicant for admission to the bar should be recommended to read before presenting himself for final examination :

The portions of the Old Testament which contain the Hebrew law ; the entire New Testament—it being observed that this recommendation of the Committee deals with the Bible entirely in its literary aspect—six of Shakespeare's plays, which shall include any three of the historical plays, and, in addition, "Hamlet," "Macbeth," and "Merchant of Venice" ; one book of Milton's "Paradise Lost," and all his shorter poems ; Pope's "Essay on Man" ; Dryden's "Alexander's Feast" ; Gray's "Elegy" ; Wordsworth's, Tennyson's, Browning's and Longfellow's most celebrated poems ; three of Macaulay's essays, including the "Essay on Bacon" ; Three of Emerson's Essays, including the "Essay on History" ; Locke's "Essay on the Human Understanding" ; "Lowell's "Essay on Democracy" ; Thackeray's "Esmond" ; Hawthorne's "Marble Faun" and "Scarlet Letter" ; Dickens's "David Copperfield" ; Cooper's "Spy" ; Warren's "Ten Thousand a Year" ; George Eliot's "Romola" ; Marshall's "Life of Washington" ; The Lives of the Chief Justices of the United States ; the selected Oration of Burke, Erskine and Webster ; Von Holst's "Constitutional History," and Bryce's "American Commonwealth."

In submitting this list, your committee feels that there is nothing unreasonable in expecting every applicant for admission to the Bar to be familiar with the works contained in it. It is apprehended that no student who completes the course of reading thus mapped out will ever regret the time which it costs him to do it justice. It will be remembered, however, that special provision has been made for accepting "equivalents" in lieu of the recommended works. This provision is for the benefit of those who may have difficulty in getting access to the books included in the list.

II. Such are the conclusions reached by your committee upon the points which it has been your committee's duty to

consider. The report as it stands represents the result of much study and deliberation. An attempt has been made to solve each problem with due regard for the practical phases of the questions involved, always mindful, however, of the paramount importance of emphasizing the truth that the practice of law is the practice of a learned profession, and that those who are admitted to the Bar should, in a real sense, be worthy of the ministry to which they are called. Your committee ventures to express the hope that its report will meet the approval of the Committee on Legal Education substantially as it stands, for it is not improper to observe that a scheme worked out in committee is more likely to be consistent, coherent and practicable, than a scheme which results from a general discussion, in the course of which much is necessarily said that does not stand for previous reflection and research.

Your committee desires to make its acknowledgements to John D. Shafer, Esq., Dean of the Pittsburgh Law School, who was kind enough to give the committee the benefit of his advice upon the several points with which the committee had been called upon to deal.

All of which is respectfully submitted.

J. A. McILVAINE, *Chairman*,  
(WASHINGTON)

CHARLES H. NOYES,  
(WARREN)

DELOS ROCKWELL,  
(BRADFORD)

E. E. ROBBINS,  
(WESTMORELAND)

WM. TRICKETT,  
(CUMBERLAND)

EDWARD J. FOX,  
(NORTHAMPTON)

GEORGE WHARTON PEPPER, *Secretary*.  
(PHILADELPHIA)

MR. HAYES, *Vice-President*: You have heard the report of the Committee on Legal Education; what action shall be taken upon this report?

MR. LLOYD, Cumberland: I move that the report be received and filed.

Duly seconded and agreed to.

MR. HAYES, *Vice-President*: The report of the committee on the matter suggested in both the committee's report, and that of the sub-committee referred to therein, are now open for discussion, and we will hear anything that is desired to be said on the subject.

MR. HARGEST, Dauphin: In looking over the report I notice that in the suggested curriculum of study the last two books of Blackstone are omitted. I presume that is intentionally done, but I ask the committee to explain the reason for that omission for the benefit of the Association.

MR. SNODGRASS, Dauphin: I may state for the benefit of the Association that necessarily the sub-committee has more information upon this subject than any member of the general committee can have. This committee had Judge McIlvaine as Chairman, and Mr. Pepper as Secretary, and has done a very great deal of work that does not appear upon the report of the committee. It comprehends the entire subject, and any inquiries relative to the reason for this or that recommendation, or this or that action, would be more properly addressed to either the chairman or secretary of the sub-committee than to any one of the general committee, or myself. I would, therefore, suggest that Mr. Pepper answer that question, although anyone who reads the report will see that the subjects treated in the Third and Fourth Books of Blackstone are by no means omitted. They are included and covered entirely by the curriculum, without naming them expressly.

MR. HAYES, *Vice-President*: The Association will be glad to hear from Mr. George Wharton Pepper, of Philadelphia.

MR. PEPPER, Philadelphia: I think perhaps it is

unnecessary to add anything to what Mr. Snodgrass has said. An inspection of the report of the committee as adopted will show that the subject-matter of the Third and Fourth Books of Blackstone proposed as separate subjects of study, that is to say, Private Wrongs and Public Wrongs, are comprehended in the suggested curriculum by the separate study of the law of torts as a separate body of law, and the law of crimes as a separate body of law. Within the suggestion that the committee has ventured to make with respect to the literature of this course, and included in the suggested works of standard authority in the course, comes, of course, Blackstone as well as Cooley and Pollock on Torts, in the one case, and Russell and Stephen on Criminal Law, &c., on the other. In other words, the subjects of study represented by the Third and Fourth books of Blackstone, are, as Mr. Snodgrass has so well said, by no means omitted. It seemed to the committee advisable to call attention to the subject as a separate subject, rather than to speak of them as the Third and Fourth Books of the great commentator.

MR. RHOADS, Philadelphia : Let me ask a question. Is not that true also of the First and Second Books of Blackstone ?

MR. PEPPER, Philadelphia : Yes, to a great extent, excepting only this—that the First and Second Books of Blackstone, I suppose, stand to-day as accurate photographs of the law which they portray in a sense which is not true of the remaining two books. The body of the law of torts as set forth in the Third, and the law of crimes as it appears in the Fourth Book, is, of course, in no sense similar to the law as we know it to-day ; whereas the law of real property as outlined in the Second Book is practically identical with the present law.

JUDGE ROWE, Franklin : I am a member of the general committee, Mr. President, but some of the members of the general committee know very little more about this report than the rest of the Association. The sub-committee had had this matter in charge and reported to us ; and I wish



very much—and I know the members of the Association will agree with me—that Mr. Pepper would give us an outline or synopsis, at least, of this report, so that we may see in general what it is that the sub-committee proposes. I am very largely yet in the dark. I think the Association will agree with me in requesting that we have that much.

MR. PEPPER, Philadelphia: I perhaps would have been able to make a more orderly statement if I had anticipated that the proceedings would take this course. I may say briefly, however, that, as will appear from an inspection of the report, the committee has addressed itself to the consideration of problems which fall under the following heads:

*First.*—With respect to the scope of preliminary examination for the registration of students at law.

*Second.*—Concerning the length of the course of legal study between the time of registration of students and the time of final examination for admission to the Bar.

*Third.*—With respect to the mapping out of a suggested curriculum for a course of study during that time; and

*Fourth.*—The subject of final examinations, the way in which they should be conducted, and the general system of examinations, with the end in view of securing, as far as possible, uniformity of standard and method in different judicial districts throughout the Commonwealth.

Of course the committee has been compelled to take into consideration such incidental topics as the question of whether or not the diplomas of law schools should be accepted in lieu of examinations for admission to the Bar, and whether or not a period of time or clerkship in the office of a practicing lawyer should be required, even in the case of those who attend law schools.

In substance, the conclusions of the Committee upon these different points are as follows:

First, with respect to the standard of preliminary examinations: It has seemed to the committee not unreasonable to suggest, as a standard, the standard represented by the equipment of the average graduate of the average Penn-

sylvania High School, which is another way of saying that it is the average equipment of the average student who is capable of entering the Freshman class of a Pennsylvania college in good standing; that the subjects of study upon which a student should be required to prepare himself for the purposes of a preliminary examination are such studies as are represented in the curriculum of our Pennsylvania High Schools. The subjects are in general those which at present stand, at least on paper, among the list of requirements in the different jurisdictions. They are elementary mathematics, arithmetic, algebra through quadratic equations; in history, universal history, but with special reference to the history of England and America. In language the committee has recommended an examination in Latin, although the committee are by no means clear that it would not be perhaps expedient to give the student an option between Latin and any other language than English, as for example, French or German, as the case may be. But the committee after deliberation came to the conclusion that it was not unreasonable to make at least an elementary requirement of Latin, and the recommendation so stands in the report.

The committee has laid special stress upon English preparation; that is, the basis of an English education in respect to rhetoric and composition. It seems almost unnecessary to make the statement that the student who is prepared to begin the study of law should be able to write well, and express himself clearly, in terse and elegant English; and yet those of us who have had the opportunity of serving at preliminary examinations on committees, know that we are very often, under existing standards, compelled to admit men of whom this is not true. There are, I think, present some members of the Board of Examiners in Philadelphia who remember a young man that was given some English sentences to correct, one of which was: "This man don't know what he ain't fit for;" and, after mature deliberation, he corrected his paper thus: "' This man don't know what

he ain't fit for ;' this sentence, when corrected should read : 'This man ain't fit for what he don't know.' " (Laughter.)

It is perfectly evident in that case that the man had the necessary intellectual equipment, but that he needed a little preparation in matter of form.

It is that which the committee aims at insisting upon in making the preliminary requirement which the report contains. With respect to the length of time required of students at law between registration and the final examination for admission, the committee found a great diversity of practice throughout the Commonwealth. In some instances there seems to be no iron-bound rule at all as to the duration of the course of study.

In other words, in some counties a man seems to be at liberty to come before the Board whenever he considers himself prepared ; and, if the committee agree with him, he can pass without any definite course of study so far as time is concerned ; in other jurisdictions, two years is required, and in some three years. The committee believe that, of the jurisdictions in which a fixed time is required, a majority insist upon three years ; and the committee, by a large preponderance of opinion upon the part of its members, have decided to recommend a three years' course of study, and the course suggested is of such a character as to deserve the giving of three full years of time to it.

The committee have been somewhat influenced, I think, by considering the history of required courses of study in our sister profession of medicine. We have observed from the way in which the period of preliminary study has been constantly extended, until now four years is looked upon as the standard or regulation term ; and we have felt that we were not taking too advanced ground in recommending to the Association three years as the required term.

And, then, let me say in this connection that, in suggesting a three years' term of study, it has seemed not improper to give to the student his option of passing examinations at intervals throughout the course, at the expiration of each of

the three years, instead of requiring him to be prepared all at once at the end of the three years on all the subjects of his course. If the curriculum is at all elaborate, or the course of study exhaustive, and if a high standard of examination is insisted upon, the student is subject to a very considerable strain in passing off the work at examinations conducted all at one time ; and we have found that in many quarters there is a demand for some such graded system of examinations ; and, accordingly, the committee has reported in favor of holding examinations at the end of each of the three years, if the student desires to avail himself of the privilege ; and, in this way, not only making it possible to introduce some coherent system of progressive study during the time of preparation, but also to lighten the burden upon the student.

As respects the curriculum, perhaps little is to be gained by making a statement here ; it is the sort of thing that we all realize we have to puzzle over and think about. We have to bring to bear upon it a good deal of thought and reflection before we can really form a very valuable or intelligent opinion as to the merits of any suggested course. I can only say this—that the committee have deemed it, perhaps, not unadvisable to call attention to the process of differentiation that is going on in the law, specialization of subjects of study ; whether it may not be expedient to take up separate titles of the law as separate courses of study, instead of gaining a general knowledge of the whole field of law from some such general commentary to that which Blackstone has given us.

For example, in one of the years of study, the second, it is recommended that a course on the law relating to Common Carriers should be set before the student, the idea of the committee being that there has developed in late years a great body of law which stands by itself under that designation, a great body of law in respect to the rights of carriers of goods and passengers, and their liabilities, and how their liabilities can be limited, and the relation between the shipper and insurer, etc. ; the great questions of commercial law, the operation of bills of lading, etc. ; all of which, of course, the

student of former times gained a fragmentary knowledge of in connection with general courses on contract and general courses on bailments and the like. And yet the law is specialized, and has developed in such a way that the committee believes that great good will be done by calling the student's attention, especially in this way, to the differentiation that has taken place.

And so also with the subject of bills and notes, negotiable paper. It seems to the committee that something is to be gained in considering the development of the principles of contract as related to negotiable paper, beyond the mere study of the principles of contract generally; and that the student will be made to understand, by such a grouping of courses as that suggested, that the law has in fact developed itself upon different lines which are sub-divisions of the general law of contract; and that such important concrete and independent sub-divisions may, with advantage, be treated separately.

Of course, the committee has borne in mind that it is a course formed primarily for Pennsylvania lawyers. Therefore, stress has been laid upon the importance of Pennsylvania cases in the actions of replevin, assumpsit, etc., and upon Pennsylvania statutes; and it is suggested that, as heretofore has been the case, the local Boards of Examiners shall continue to specify the divisions of statutory law upon which students shall be prepared, so that they shall have a fit equipment in the statutory law of Pennsylvania, as well as the general principles of the common law which form the basis of the course.

Then as respects the method of conducting examinations both preliminary and final; the committee has deemed it wise to lay stress upon the importance of written examinations as distinguished from oral. Not that the written examinations are entirely to supersede the oral, but that the basis of the examination should in all cases be a written paper. And the reason for that, I think, is found in our common experience. Those of us who have served on Boards of Examiners know in our own cases how unfair we

are to students, and unfair to the Bar, if we leave it to ourselves at the last moment to prepare questions, and evolve them from our inner consciousness, and pop them upon the student without any adequate preparation or forethought. Questions both on preliminary and final examination which are thus propounded are very apt to be either ridiculously easy questions or ridiculously difficult ones. If it is a question of law on the final examination, the examiner is very apt to question the student with respect to the last case which he himself has been arguing, and on questions of law, which, from the very fact that he has been recently arguing them, seem to be unsettled. And I have heard questions asked on examination in our own committee in Philadelphia, which it is possible even two or three members of this Association could not have answered without hesitation. [Applause.]

We have, therefore, suggested that the examinations be largely written, and the questions be carefully formulated in advance; and I venture to suggest this, that, after the question is intelligently formulated, students should be left to answer without further explanation or assistance from the examiner. A great deal of the value of an examination is lost if the examiner permits himself to be interrogated upon what he means by the question, etc., until he gives the student an inkling to which he is not entitled as to the answer which ought to be given. If a question is fairly framed in advance with forethought and care, there is no reason why the student should not be permitted to stand or fall by the answer which he gives without further assistance from the examiner.

The question of percentage of correct answers to questions asked was considered by the committee; and it was believed to be fair to suggest that no student should be permitted to pass on final examination, or on preliminary examination, unless he answer, to the satisfaction of his examiners, at least sixty per cent. of the questions propounded to him. That is, perhaps, a compromise. I hear gentlemen around me saying that seventy-five per cent. should be insisted upon. It is not

uncommon to permit a man to pass if he attains an average of fifty per cent. I mean to say this—that if, for instance, there are ten questions asked and the perfect answer to each should count as ten, one hundred being the highest attainable mark, that if a man makes sixty on the schedule of one hundred—that is, answers six out of the ten questions perfectly, or else if he does not answer any one perfectly, but the grading shown amounts to that he should be permitted to pass. I should say that being examined separately under this system on each subject he should make sixty on each subject. Of course, this is the minimum requirement.

And in this rather rambling, and I am afraid, incoherent statement, I see clearly that I should have said before, that it is a part of the recommendation of the committee, that the student should be examined separately upon each of these different heads or subjects contained in his curriculum; that is to say, that a student should be given a paper dealing, for example, with contracts. He should pass that examination on contracts before he is taken up with an examination on the next subject, if you please, on real property, whatever it may be, but that the questions should not be mixed one with another; that a man should be definitely examined upon one title of the law before he passes on to the next, and so on; and that he should be advised in advance of the order in which he is to be examined. And if a man failed at the end of the first year on any one of the subjects upon which he is examined, I should say he should be conditionally passed into the subjects of the next year, but given to understand that he must make up at the next examination the subject in which he has been found wanting, notwithstanding his average, because on that particular subject he has been found to be deficient, and no amount of knowledge of real property will conceal his lack of knowledge of the law of contracts.

As respects the question of the acceptance of a diploma in lieu of examination, the committee, after very considerable debate, decided to recognize the fact that large proportions of the students of the Commonwealth are at present

studying law in law schools in different parts of the State, and in other States ; and they have decided, therefore, to recommend that the diploma of a law school be accepted in lieu of final examination, if the curriculum of the law school was a three-years' curriculum.

It was suggested at a meeting of the committee this morning that probably there were law schools in the State in which the curriculum was two years only, about which some of us were uncertain ; and it was thought advisable to report that in such a case, of course, the diploma for that two years should count as covering two years in the course, and the additional year should be insisted upon.

MR. BUDD, Philadelphia : Allow me to interrupt you a moment. Suppose in the two years of the two-years' course, the law school attempts to cover the same ground that is covered by the three-years' course in the more extended curriculum ; if you would prescribe a certain course for the third year, some of those subjects the two-year men would have gone over, and yet be perhaps entirely ignorant on some subjects in the first and second year. What would be your way of obviating that difficulty ?

MR. PEPPER, Philadelphia : Our idea was that the diploma should be received as equivalent for two years' study in the courses which are taught in the school awarding the diploma, and that the third year course of study should be those subjects of the course here recommended, not covered by the curriculum of the institution granting the diploma. The final examination should be on that. Of course, this would require some readjustment.

MR. SNODGRASS, Dauphin : Besides, it is optional with the student to take his annual examinations or a final one.

MR. PEPPER, Philadelphia : Then there is one question which I suppose will very possibly divide the Association, and that is the question of the proper requirement in relation to clerkship in the office of a practicing attorney.

The committee found on investigation that there is a very large number of students throughout the Commonwealth who



derive all their instruction from office study. The Committee also found that there is a large number of students who derive all their instruction from law school work. The question was, therefore, taking for example students who spend three years in the law school, whether they might fairly be required to pass one or two or three years in an office in addition to their law school work? It was thought that if this requirement were made, that perhaps a course of study would thus be prescribed as respects length, which would make law school study impossible. On the other hand, there was a strong feeling on the part of the committee, that the important training to be derived from those offices in which training is given should not be left out of sight, should not be treated as unimportant. So the committee, after deliberation, decided that in the case of those students who have attended a law school, a six-months' clerkship in the office of a practicing attorney should be sufficient as regards time of registration, but that, in order to insure that a maximum value has been obtained from that period of office registration, an examination should be required upon the fruits of the office work, at the time of the presentation of the diploma, which should pass the student upon the curriculum; that is to say, the student should be given a state of facts as a defence, upon which he should be required to draft an affidavit of defence; that he should be instructed on the spot to prepare a deed or mortgage, or that he should be given facts stating the cause of action and should be made to draw a declaration or statement in trespass, or assumpsit, as the case might be. In other words, it was thought that by bringing the course of clerkship in the office of a practicing attorney down to a minimum, that the problem with respect to law students could be solved; but that, by making a test requirement as to the results of that clerkship sufficiently high, we could ensure that the six months spent in the office would be devoted, not merely to learning practice by attrition, as is now so often the case, but that practice should be made the subject of the same diligent and careful and devoted

study as the other subjects of the course. And the committee came to the conclusion that if a man devoted his whole time for six months to the study of office methods and the operation of the machinery of the prothonotary's office, the Court of Common Pleas and the Orphans Court, he could in six months' work gain a sufficient training on the practical side, could learn enough of the law in motion to equip himself for admission to the Bar on the basis of the three-years' course of law school study which he had theretofore taken. Of course, it goes without saying, that those students who do not care to go to law schools, or who are unable for one reason or another to go to law schools, the old condition of things remains true—that they will in almost all cases register in offices and spend their whole three years there. But, even as to them, the requirement for an articulated clerkship in an office is six months as in the other case. Of course, this is a knotty problem and one which may possibly divide the Association. It has been very earnestly considered and has been adopted by the committee with the hope that the result which we have reached is a reasonable result.

JUDGE LANDIS, Blair: May I ask a question? When you say that the committee recommends that the Committee on Examination accept the diploma of a law school, do you mean that they shall accept the diploma of a law school incorporated, or not incorporated, without the right and authority to investigate the character of the institution and inspect and investigate its method of training and instruction, and to ascertain the nature and character of the instruction imparted there so that they shall judge whether the applicant is a proper person to be admitted to the Bar?

MR. PEPPER, Philadelphia: Not at all. I think the view suggested by your question is entirely in harmony with the view of the committee. The committee suggests the acceptance of the diplomas in art and sciences of colleges in lieu of examinations preliminary to registration, and the acceptance of diplomas of law schools in lieu of examination for admission to the Bar; but, of course, the committee

reserves the right to test—or, perhaps, I should put it in this way—that there is reserved the right to scrutinize with great care the course of study and methods of instruction of the colleges on the one hand, and the law schools on the other; and only worthy diplomas are to be accepted in either case. But the committee suggest that, instead of leaving this matter to be worked out by each of the local Boards of Examiners, which will result in the acceptance of a diploma in one jurisdiction that is rejected in another, that it may not be unwise for the Committee on Legal Education of this Bar Association to charge itself with the duty of scrutinizing the curricula of the colleges and of the law schools, and the methods of instruction in each, and to set forth an authoritative list from time to time for the information of local Boards of Examiners, with the end in view of attaining uniformity in the different jurisdictions. In other words, it has been observed that the diplomas of law schools are accepted now in one jurisdiction and rejected in another; that the diploma of a college is accepted in lieu of preliminary examination in one jurisdiction and rejected in another; and it has seemed to us that we now have an opportunity of making a real, thorough and impartial investigation of just what treatment should be accorded these different diplomas, and that that may with advantage be done by a central body and set forth authoritatively for the information of the local boards.

And in answering the question of Judge Landis, it is only proper to observe that the whole scheme proposed by this committee is a scheme which will depend for its efficacy, not upon legislation—because the report represents the committee as coming to the conclusion that at this time at least legislation upon this subject is not required; that this is not the time—the time may or may not come—but this is not the time for asking a central Board of Examiners to conduct examinations in different parts of the State—but the whole system depends for its efficacy upon the results of a campaign of education, and the adoption voluntarily in the different

judicial districts of the results recommended by this Bar Association. We have thought that here is a chance to make a coherent scheme, if adopted as it stands, and thus secure a measure of uniformity which is now sadly lacking among the different judicial districts.

In order to facilitate that, the committee have recommended that this same central committee of the Association should in each year prepare on every subject standard examination papers both preliminary and final, carefully formulated and prepared questions which shall be in the hands of the Secretary of the general committee, ready to be put into the hands of such local Boards of Examiners as desire to avail themselves of it. That is to say, that a standard set of papers shall be available for use throughout the Commonwealth in each year, so that there will be a measure of uniformity in the questions submitted, leaving it to the discretion of the local boards to insist upon a measure of uniformity in the standard of correct answers required as a necessary preliminary.

With respect to the literature of these courses, the committee has felt that the literature is constantly changing; that old books, most of which will always be good, are in some instances being superseded by newer and better books. It is, perhaps, idle to put down in a curriculum certain standard text-books as a fixture. Nevertheless, the committee have felt that they could with advantage recommend books; and a list of such recommended books, covering all the courses of study, is set forth in the report.

And in the interest of a higher standard, the general education upon the part of the profession, recognizing that this more advanced requirement cannot properly be insisted upon for the preliminary examination, the committee have set forth a recommended course of study, or a suggested course of study in general history and literature, to be pursued by the student during his three years of legal study, with the idea that when he comes up for final examination he will

certify, or his preceptor will certify, that he has, in an intelligent sense, covered the course which is thus pointed out.

This is, of course, in some sense a counsel of perfection, as one of our committeemen characterized it; and yet it is thought that, perhaps, it will have a real use, a real utility to be found productive of real good; and it is believed that a very large percentage of students who certify at the end of their course that they have covered the recommended course, will, in fact, have done so. And so, upon the whole, gentlemen, the committee has simply a report that you have before you, which is believed to be a coherent scheme, both as respects preliminary examinations and as respects the course of study leading up to admission to the Bar, as respects the mode of conducting examinations, and as respects the standard to be insisted upon in passing examinations, the same general recommendations with regard to the acceptance of diplomas and with regard to the literature of the course and work and training generally.

If this report or any modification of it is adopted by the Association, it is the purpose of the Committee on Uniformity to come in contact with the Boards of Examiners and the judges throughout the State, with a view of inducing them to give the scheme a trial as a whole; to bring themselves in contact and into relation with our general Committee on Legal Education, believing that if they do a silent pressure can be exerted all over the Commonwealth and all at once, which will certainly result in bringing about a measure of uniformity of which we now stand sadly in need. I feel that I should apologize to you for having spoken so long. (Applause.)

(At this time, President Dickson resumed the chair.)

JUDGE WHITE, Indiana: I just have a practical word to say on the subject. I was just going to repeat the utterance of Brother Greer, I think it was, in narrating the experience of some young man after he had been examined—of course, it was not in his district—who said, “I would have had no trouble in this thing if those fools had only asked me things I knew; the trouble is they asked me

a lot of stuff I did not know," and, of course, they could not expect him to answer that.

But, be that as it may, this is a practical matter. I am not going to theorize on the subject and the book. The report, exhaustive, intelligent, and practical doubtless as it is, will speak for itself; and we will take that home and we will read it; but what I want to say here and hear here is some expression of the different districts of the State as to the method and manner of examination for admission to the Bar.

Yesterday, in court, I directed the oath to be administered to three young men who are now full-fledged lawyers, I may as well say that, to show you that the good work is still going on; but the question is what are the requirements and what are the practices, in a word, for I do not want to theorize. The old Tenth District, of which my district was a constituent part, at one time had a very high standard. Sometimes I think that the standard in my district is a little higher than it should be, but we defer to the rule in that respect made by our Bar Association. The preliminary examination is conducted by the same committee that conducts the final examination. There was a request made to divide them, and I did not think it was practical, though possibly it might be done with benefit. The requirement for examination in all cases is that which would be required in a college of good standing for admission to the junior class. I myself think it is a little too high, for I am not sure that I could stand the examination myself; but, be that as it may, that is the preliminary examination.

In my district the examination is conducted in open court. The court assembles formally for the purpose. The presiding judge participates and seeks to ask practical questions, not off-hand, because we thought what was worth doing at all was worth doing well, fairly to the young gentlemen. Of course, there is not a large assemblage in the court-house; it is not in chambers, it is in the court-room.

That is our rule. I will not enlarge upon the course of

examination, which is upon the subjects of law study. I have not time to spend in detail as to that, but the practical difficulty—and I would like to hear from my brethren around in the districts around me—is to decide as to the competency of the applicants for admission after the examination. The hearts of lawyers are all kind and sympathetic, we all understand that ; and after the young men have passed a reasonably good examination, the disposition is to admit them ; they are rarely refused.

The practical question upon this subject with me is to get a minimum ; and if you could just have a uniformity on this subject throughout the Commonwealth, a minimum of answers to questions, I fancy for the present we would accomplish a practical result. The desire to be kind to the young men makes the Board very indulgent. If you had an arbitrary standard of sixty per cent. or seventy per cent., it would be all right ; but that is the practical question that certainly confronts us. I know it does confront me from reflecting upon the subject, and generally confronts the committee. I would be glad now to have the representatives of the different districts explain the method of examination for admission to their bars.

MR. BURGWIN, Allegheny : I would like to ask whether there is any motion before the house ?

THE PRESIDENT : No, sir ; this is a discussion of the report of the committee.

MR. BURGWIN, Allegheny : I would move, then, that the report of the committee be adopted together with the report of the sub-committee.

Duly seconded.

MR. SMITH, Philadelphia : If the gentleman will permit me, I think this resolution would convey the sentiment of the Association, and I offer it as a substitute :

*Resolved*, That this Association approves in general of the report of the Committee on Legal Education without committing itself to an approval of all of its details, and the Committee on Uniformity is continued with authority to carry out the plans suggested in this report.

Duly seconded.

MR. SIMPSON, Philadelphia : There is one difficulty, viz., that the incoming President will have the appointment of the new committee.

MR. SNODGRASS, Dauphin : The Committee on Uniformity was appointed at a meeting of the general committee last December ; but, after considering the subject, it was found impossible to do their work satisfactorily until the other committee had filed a report ; so that substantially there was very little if anything done in that line. The general Committee on Legal Education goes out of existence and the new committee is appointed by the incoming President, so that there will be an entirely new Committee on Uniformity as well as on General Education. That is the pivot of the whole business. It is a question of making this uniform throughout the State, and that is a matter that deserves the careful consideration of the general Association.

MR. SMITH, Philadelphia : Judge Simonton calls my attention to Section 37 of the By-Laws which provides that " Unless otherwise provided for hereby or by the Association at its annual meeting, all standing committees and vacancies therein shall be filled by appointment of the President to serve until the expiration of the next annual meeting and the appointment of their successors." If the present committee would be willing to serve, the experience it has gained, and the beginning it has made in the work, would make its services, of course, invaluable to this Association. I offer this resolution, thinking it might formulate the views of the committee ; but any modification that they would suggest I would accept personally, and I think that would be the feeling of this Association. My resolution as I have drawn it is as follows :

*Resolved*, That this Association approves in general of the report of the Committee on Legal Education without committing itself to an approval of all of its details, and the Committee on Legal Education is continued with authorization to carry out the suggestions made in the report.



MR. SNODGRASS, Dauphin : In that connection, permit me to make this suggestion : Here is a very large committee—I do not know exactly how many members—but it is composed of at least one member from each judicial district in the State. Necessarily in such large committees there will be some very efficient people and some very inefficient people. That is necessarily the case. My observation with respect to this committee, as well as what I have heard, leads me to believe that the committee ought to be reappointed, and those may be reappointed whom the incoming President thinks proper to reappoint, while others again will very probably be added in place of some who very probably do not care to serve on such committees. I only speak of that in the line of the efficiency of the committee.

MR. SMITH, Philadelphia : I modify my resolution so as to read—that this Association approves in general of the report of the Committee on Legal Education without committing itself to an approval of all of its details, and the Committee on Legal Education is authorized to carry out the suggestions made in the report. There is always a Committee on Legal Education.

MR. BUDD, Philadelphia : It seems to me there is a little inconsistency in the resolution as presented by my friend on the right. The Association is made to expressly state that it does not commit itself to the details, and then recommit the matter to the committee with authority to carry out those details to which the Association has declined to commit itself. Now, after that preliminary assertion, would not it be better if we were to have nothing done of an active character without further discussion, and simply to recommit the report to the committee, with say, power to act, if you will ? It is a little too much to expect those of us who have just received copies of the report of the sub-committee—I was fortunate enough to get mine this morning, and I have not been able to read it thoroughly ; and I know there are are gentlemen here who have only had theirs in their hands a very short time—it is a little too much to

expect us to form an intelligent judgment in reference to it. I have seen enough of it to be impressed with it that it is an admirable report, and I see nothing material in it to which I should make any objection whatever. But I cannot be prepared to vote for the resolution in which I said I did not approve of the details, and yet order those details to be carried out. I think a recommitting of the report to the committee with power to act at its own discretion would be certainly a tribute, and I believe not an undeserved tribute to the committee, showing our confidence in it and at the same time would not put us into a rather illogical position.

MR. FOX, Northampton: As a member of the sub-committee, I simply desire to say that I think the suggestion made by the last speaker is an admirable one, and one that would be entirely acceptable to the committee if continued by the Association. It may very readily occur that, after we have had a consultation with the various judges of the various parts of the State, we may ascertain that it is necessary for us to modify our report in some of its details; and I hope, therefore, that the gentleman who introduced the original resolution will be able to accept the substitute suggested by Mr. Budd, and that that may be adopted by the Association.

MR. SMITH, Philadelphia: I will accept it, certainly.

MR. KRESS, Clinton: I do not understand one suggestion of this committee with reference to the questions that are to be propounded. I understand that uniformity is to be had, if possible, in requiring the student to answer a certain percentage of the questions. Is it proposed to have the same questions asked of all students, or is each committee to prepare its own set of questions? There would be no uniformity whatever, it seems to me, if each committee presented its own questions; and in that case the percentage of the answers would furnish no guide whatever to uniformity.

MR. SNODGRASS, Dauphin: The desire of the committee is to have the questions uniform as well as everything else that is suggested in the report.

MR. KRESS, Clinton: Then it seems to me that the diffi-

culty would be this—if these questions are to be printed and submitted, students will be enabled to get them and be prepared to answer a very large percentage when they come up for examination.

THE PRESIDENT: Will Mr. Pepper solve the difficulty suggested by the last speaker?

MR. PEPPER, Philadelphia: The Chairman has just suggested that I shall answer the question asked by Mr. Kress. Of course, the strength and at the same time the weakness of the suggested scheme is that it must be adopted in its entirety to be useful or valuable. The thought is that new sets of questions will be prepared by the central committee of this Association, for the use, of course, only of such local Boards as chose to use them. At all events, they shall be prepared by a central committee of this Association new each year, and they shall be transmitted sealed to the Secretary of each Board which comes in contact with the central committee; and that all over the State examinations on a given subject shall be held on the same day, thus making it impossible that there should be any collusion or inspection of the papers in advance, or the like. Those matters are specifically covered in the report.

MR. SMITH, Philadelphia: The resolution as it now stands and which I accepted is:

*Resolved*, That the whole matter covered by the printed report of the Sub-Committee on Curriculum to the Committee on Legal Education, be recommitted to the Committee on Legal Education, when appointed, with power to act.

JUDGE MCPHERSON, Dauphin: I do not quite understand the scope of the phrase, "with power to act." Is it intended that it shall at once be put into operation or an effort made to put it into operation at once throughout the Commonwealth, and if not, what action is it contemplated that the committee is to take?

MR. BUDD, Philadelphia: My intention in offering the substitute was that any action which the committee thought fit, after giving further consideration in the lines of its

printed report with the intention of bringing the matter into actual effect at once, after consultation with the judges and perhaps local Bars, it should be at liberty to take; in other words, to put it into effect as soon as possible.

JUDGE MCPHERSON, Dauphin: In other words, it is the purpose of the resolution that the Association shall accept this scheme of study of preliminary and final examination, and put it into operation as soon as practicable?

MR. BUDD, Philadelphia: Allowing it to make such deviation as to details as it may deem wise.

The question being upon the resolution of Mr. Smith, "that the whole matter covered by the printed report of the Sub-Committee on Legal Education be recommitted to the Committee on Legal Education, when appointed, with power to act," it was agreed to.

THE PRESIDENT: The next business on the programme is a paper by William G. Rodgers, Esq., of Allegheny, discussing the proposed Libel Law of the Pennsylvania Editors' Association, which is as follows:

### THE PROPOSED LIBEL LAW

[Prepared under sanction of the Pennsylvania Editors' Association.]

SECTION 1. Be it enacted, etc. If any person shall wilfully, and with malicious intent, to injure another, publish, or procure to be published, any libel, such person shall be guilty of a misdemeanor, and on conviction be sentenced to pay a fine not exceeding \$1000, or undergo imprisonment not exceeding twelve months, or both, or either, at the discretion of the Court.

SEC. 2. In every criminal prosecution, and in every civil action for publishing a libel, the defendant may, upon the trial, give in evidence the truth of the matter contained in the publication charged as libelous, and such evidence shall be deemed a sufficient justification, unless malicious intention is proved affirmatively.

SEC. 3. No conviction shall be had in any prosecution for libel, where the fact shall be established to the satisfaction of the jury, that such publication was not maliciously or negligently made, but was published with good motives and justifiable ends.

SEC. 4. That actions for libel, civil or criminal, may be instituted only in the county in which the alleged libel has been actually printed, if published in a public journal, or in the case of a written libel, in the county where it has been made public.

SEC. 5. In any action brought for the publication of a libel in any newspaper in this Commonwealth, the plaintiff shall recover only actual damages, if it shall appear at the trial of such action that such publication was made in good faith, and that there were reasonable grounds for believing that the statements set forth in such alleged malicious publication were true, and that its falsity was due to mistake or misapprehension of the facts, and that in the next regular issue of said newspaper, after such mistake or misapprehension was brought to the knowledge of the publisher or publishers of such newspaper, whether before or after suit brought, a correction or retraction was published in as conspicuous a manner and place in said newspaper as was the libel.

SEC. 6. Criminal actions for libel shall be maintained for any maliciously false publication, or for a malicious publication not proper for public information, relating to a private individual, against the writer, the editor who directs the publication, the person or persons who furnish the malicious and false information, and any editor or publisher who knowingly permits such publication; but malice shall be proved as other criminal charges are proved, without legal presumption of guilt.

SEC. 7. In all civil actions for libel the plea of justification shall be accepted as adequate, when it is plead by the defendant that the publication is substantially true in every



**WM. B. RODGERS**

... and if such person is not a member of the court and never has been, the action of justification, it seems to me, is for the damages.

SEC. 8. In civil actions commenced in the district court of the United States before the trial of the cause, the plaintiff may, upon the pleadings, show why a writ should be entered by the plaintiff, and may, if in the presence of the defendant, be examined in the same manner as a witness, and given evidence, and may be sworn to by the plaintiff.

of this  $A$  is given by  $\mu_{\mathcal{A}}$ .

DRESS BY WILLIAM B. R. . . . . ESQ.  
OF ALLEGHENY

... is not assigned to the duty ...  
... on the premises ...  
... only ...

1. We have no general complex  $\mathcal{C}$  of  $\mathcal{A}$  in  $\mathcal{B}$  by itself.  
 2. What we do have is:

(c) Section 23 of the present code which  
 "no person shall buy, and possess, the p-  
 "tents of any synecode which shall be the p-  
 "tents of any such person."

5. The Act of 1850, which fixes the limitation of time; and

the Act of 1893, making it a misdemeanor to send, deliver or transmit to any newspaper, magazine or periodical, a libelous statement, and thereby secure the action of the same.

But above and beyond these statutes, we have the great principles of free communication of thoughts and opinions contained in the fundamental law, in Article I, Section 2.



V. 1, B R 1, 5

material respect, and if such plea shall be established to the satisfaction of the court and jury there shall be no recovery. The plea of justification, if made in good faith, shall not enhance damages.

SEC. 8. In civil actions for libel the defendant may, at any time before the trial of the case, apply to the court for a rule upon the plaintiff to show cause why security should not be entered by the plaintiff for costs, including reasonable counsel fees; and if in the judgment of the court, such security should be entered in the maintenance of justice, it shall be given satisfactory to the court before the trial of the case shall proceed.

SEC. 9. All laws, or parts of laws, inconsistent with the provisions of this Act are hereby repealed.

### **ADDRESS BY WILLIAM B. RODGERS, ESQ., OF ALLEGHENY**

There has been assigned to me the duty of making some remarks on the proposed libel law, prepared under the sanction of the Pennsylvania Editors' Association.

1. We have no general complete statute upon the subject in Pennsylvania. What we do have is:

(a) Section 24 of the penal code which defines libel as it is defined at common law, and prescribes the punishment, and Section 30 of the same code which provides the punishment for an obscene libel.

(b) The Act of 1850, which fixes the limitation of actions for libel; and

(c) The Act of 1893, making it a misdemeanor to wilfully state, deliver or transmit to any newspaper, magazine or other periodical, a libelous statement, and thereby secure the publication of the same.

(d) But above and beyond these statutes, we have the great principles of free communication of thoughts and opinions contained in the fundamental law, in Article I, Section 8

of the Bill of Rights, which section represents the development of centuries of the struggles of our race towards freedom and intelligence :

The printing press shall be free to every person who may undertake to examine the proceedings of the Legislature, or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. No conviction shall be had, in any prosecution for the publication of papers relating to the official conduct of officers, or men in public capacity, or to any other matter proper for public investigation or information, where the fact that such publication was not maliciously or negligently made, shall be established to the satisfaction of the jury, and in all indictments for libels the jury shall have the right to determine the law and the facts under the direction of the Court as in other cases.

As the law is in Pennsylvania, there can be no restraint of the right to examine the proceedings of any branch of the government. Such right is essential to the liberties of a free people, and communications of this character are absolutely privileged.

As regards public officers or men in a public capacity, publication of papers relating to their official acts are also privileged, when the publications are not maliciously or negligently made. This exemption from liability extends to publications or communications honestly made, charging against a candidate for public office something which affects his fitness for the office for which he seeks, if the charge is made not maliciously but upon probable cause, although false and its falsity might have been ascertained. Nor can there be any conviction in a criminal case, nor any recovery in damages, when the publication or communication is as to a person who holds himself out as occupying any position where the public are invited to repose confidence, in him and refers to his fitness for that position, and is not made maliciously but upon probable cause. In short, every matter proper for public investigation or information may be freely

published without liability, either civilly or criminally, if made upon probable cause and not maliciously.

Do we need anything more? It is true that newspapers in the daily conduct of their business are exposed to vexatious and often unjust and expensive litigation. If they can be relieved without doing injustice to the individual affected by such publication, such relief should be extended by legislation.

This brings us to the consideration of the proposed Act. In its discussion it seems to me that a better idea of its scope can be obtained by an arrangement of the sections different from those in the proposed Act.

I therefore first call attention to Section 6, in relation to indictments, which reads :

SECTION 6.—Criminal actions for libel shall be maintained for any maliciously false publication, or for a malicious publication not proper for public information, relating to a private individual, against the writer, the editor who directs the publication, the person or persons who furnish the malicious and false information, and any editor or publisher who knowingly permits such publication; but malice shall be proved as other criminal charges are proved, without legal presumption of guilt.

If this Act is, as I understand it to be, a complete code on the subject of libel, then there cannot be, if it becomes the law, any indictment against the owners of a newspaper for a libel; but the indictment is limited to the *writer*, the *editor* who *directs* the publication, the *person* who *furnishes* the information, and the *editor* or *publisher* who knowingly *permits* the publication.

Practically speaking, it is doubtful whether any one of the persons named can be indicted, owing to the difficulty in ascertaining the responsible person; but, even if indicted, the chances of conviction will be but slight in view of the provision that "malice shall be proved without legal presumption of guilt." If this section had left the legal presumption of malice as it is now, and had made the owners only responsible on failure after demand to give the names of

the individuals responsible for the publication, it would have provided a more efficient way for repressing libels, and in protecting the owners, than at present.

Sections 2 and 3, so far as indictments are concerned, seem to supplement each other. They are:

SEC. 2. In every criminal prosecution, and in every civil action for publishing a libel, the defendant may, upon the trial, give in evidence the truth of the matter contained in the publication charged as libelous, and such evidence shall be deemed a sufficient justification, unless malicious intention is proved affirmatively.

SECTION 3. No conviction shall be had in any prosecution for libel, where the fact shall be established to the satisfaction of the jury, that such publication was not maliciously or negligently made, but was published with good motives and justifiable ends.

Thus Section 2 makes the truth a sufficient defense in the absence of affirmative proof of malice, and Section 3 covers the case, where the defendant fails to establish the truth, but establishes the fact that the publication, was not maliciously or negligently made, but published with good motives and justifiable ends.

Whether the truth should be a defense in an indictment for libel is a subject on which there is, and for a long time has been, a diversity of opinion. The theory upon which the law excludes evidence as to the truth of a publication, is the somewhat antiquated one that the publication tends to a breach of the peace. If an individual is guilty of such conduct, or the facts and circumstances connected with him are such that their publication under our present law would constitute a libel on him, perhaps it might be for the good of the community that that conduct, or those facts and circumstances, might be published if without malice. Here I am reminded of an expression of Erskine in one of his speeches, referring to our profession, but which may well be applied to the press: "Morals come in the cold abstract from the pulpit, but men smart under them when we lawyers are the preachers."

Section 4 seeks to limit prosecutions against a

newspaper to the county in which the libel was actually printed, or in case of a written libel, to the county where it was made public. It reads :

SECTION 4. That actions for libel, civil or criminal, may be instituted only in the county in which the alleged libel has been actually printed, if published in a public journal, or in the case of a written libel, in the county where it has been made public.

The argument in favor of this is the inconvenience and the expense attendant upon being indicted in any county where the person libelled may reside, but on the contrary, the party libelled has his rights and should not, without more cause than stated in this section, be himself subjected to the same inconvenience and expense. The wrong-doer should not receive any advantage at the expense of the person wronged.

Section 1 changes the present definition of libel as found in our penal code, by inserting the words " wilfully and with malicious intent to injure." It reads :

SECTION 1. Be it enacted, etc. If any person shall wilfully, and with malicious intent to injure another, publish, or procure to be published, any libel, such person shall be guilty of a misdemeanor, and on conviction be sentenced to pay a fine not exceeding \$1000, or undergo imprisonment not exceeding twelve months, or both or either, at the discretion of the Court.

If this section is read in connection with Section 6, it evidently means malice in fact, and not malice in law. There is no reason which occurs to me why it should be necessary to prove, as against the libeller, the existence of malice in fact.

Directing attention now to so much of this Act as refers to civil actions :

Section 2 provides, " That the truth shall be a sufficient justification, unless malicious intent is proved affirmatively." This is the law now.

If we assume that a separate plea of justification may be filed under our Procedure Act, then Section 7 is the law now, excepting its concluding part, which provides that the plea

of justification, if made in good faith, "shall not enhance damages." It reads:

SECTION 7. In all civil actions for libel the plea of justification shall be accepted as adequate, when it is plead by the defendant that the publication is substantially true in every material respect, and if such plea shall be established to the satisfaction of the Court and jury, there shall be no recovery. The plea of justification, if made in good faith, shall not enhance damages.

It seems to me that this is proper. As our law is now, the rule that the damages may be increased, in case the plea of justification fails, gives a loose rein to the jury, and prevents the defendant, unless he has a perfectly sure case, from making the attempt. There need be no fear that a plaintiff will not ordinarily recover all the damages he is entitled to, if the law is changed in this regard.

Section 8 allowing the Court to require a plaintiff to give security for costs and counsel fees, is contrary to our practice, and would be class legislation and reprehensible.

Section 5 limits the recovery to actual damages, in case the publication was made in good faith and on probable cause, its falsity being through mistake or misapprehension of the facts, and as soon as notice of the mistake or misapprehension was brought to the attention of the publishers, a retraction was published in as conspicuous a manner and place in the newspaper as was the original libel. This section seems to me to be of importance. It reads:

SECTION 5. In any action brought for the publication of a libel in any newspaper in this Commonwealth, the plaintiff shall recover only actual damages, if it shall appear at the trial of such action that such publication was made in good faith, and that there were reasonable grounds for believing that the statements set forth in such alleged malicious publication were true, and that its falsity was due to mistake or misapprehension of the facts, and that in the next regular issue of said newspaper after such mistake or misapprehension was brought to the knowledge of the publisher or publishers of such newspaper, whether before or after suit brought, a correction or retraction was published in as conspicuous a manner and place in said newspaper as was the libel.

We must recognize the fact that newspapers are a pub-

lic necessity, and that the public demands all the news and demands it quickly ; that full and careful investigation of the correctness of all the columns is impracticable, and some relief against extravagant verdicts ought to be extended, if possible. This section gives a plaintiff all that he ought to have, viz : His actual damages and a retraction, in case the publication was in good faith and upon probable cause. I think the experience of so many of the profession as have to do with libel cases against newspapers, is that in nearly every case, compensation and a retraction, as in this section, will satisfy all those whose reputation is worth anything, and will save newspapers from litigation at the hands of those whose reputation has no value, except in the eyes of some juries.

This covers a general view of the proposed Act. What I have said has been mainly for the purpose of directing attention to it and inviting discussion. There are features in it which seem to be an improvement of our present law, and others changing the law so radically as to be somewhat startling to the profession. Perhaps this discussion may direct attention to the subject, so that an Act may be passed which will be abreast of the times, extend to the newspapers the relief which they should have, and at the same time give proper protection to the individual from unjustifiable assaults upon his reputation.

MR. KRESS, Clinton : I would like to inquire how this bill comes before the Association ?

THE PRESIDENT : By the action of the Committee on Law Reform. The bill was prepared by some outside body, by counsel, it is understood, and it was thought a proper subject for public discussion, and the committee have named Mr. Budd to open the discussion. What is the pleasure of the meeting as to the discussion this evening ?

After calls for proceeding with the discussion, Henry Budd, Esq., Philadelphia, addressed the meeting as follows :

MR. CHAIRMAN : If this Act were deliberately framed



for the purpose of giving to newspapers, not merely liberty, but license, I hardly think that the framers could have gone about it in a better way. From the very start, in the definition practically of what is hereafter to be the crime of libel, they have seen fit to attempt to uproot all our previous ideas on the subject, and to make a conviction or a recovery more and more difficult, and to minimize the punishment which can be inflicted, at least in a civil action—and damages are very largely punitive there and must always remain so, if there is to be any protection for the individual—as light as possible.

Compare the definition of Libel as given in the proposed Act with the definition in the penal code. As the law is at present, “If any person shall write, print, publish or exhibit any malicious or defamatory libel, tending either to blacken the memory of one who is dead or the reputation of one who is alive, and thereby expose him to public hatred, contempt or ridicule, such person shall be guilty of a misdemeanor,” and subject to the prescribed penalty.

There is a definition which is clear, which defines a crime, and which is sufficiently comprehensive for public and individual protection.

Contrast that now with the proposed definition: “If any person shall wilfully and with malicious intent to injure another, publish or procure to be published any libel, such person shall be guilty of a misdemeanor,” with the same penalty as in the former Act.

In the first place, you will observe that this proposed Act leaves the memory of the dead entirely open to any attack that anybody may see fit to make upon it. There can be no injury to the dead; and the feelings of the living may be outraged over and over again by attacks upon their ancestors, without any protection whatever.

Again, it leaves out that part of the law constituting a libel which comes from the exhibition of a picture: because it will not do to say the publication is exhibition, or exhibition is publication, when in the former Act we have both

words, and in the proposed Act only the one. The omission must mean something or it would not have been made. The insertion of the word "wilful," of course only emphasizes the difficulty, which it is intended to hereafter raise in the way of recoveries in libel suits, or in obtaining conviction for libel in a criminal prosecution. So much, then, for the very root idea which the Pennsylvania Editors' Association has attempted to introduce into our libel law. We can see at once how it narrows the scope of a libel.

Now, then; having made the goal somewhat different, we will see how much more difficult it has made the road to travel to that goal. In the first place, in the very bringing of the suit, this Bill proposes what?

"Actions for libel, civil or criminal, may be instituted only in the county in which the alleged libel has been actually printed"—not where the injury is really committed, but where the printing happens to take place. Let us suppose, for instance, that a gentleman in Pittsburgh is libeled by a paper in Philadelphia. The libel does not hurt him in Philadelphia, where he has no particular reputation, where he is not known, but in Pittsburgh he is known; his character is known there; his reputation is there. A paper printed in Philadelphia is sent to Pittsburgh—circulated there—and you tell the Pittsburgher to go to Philadelphia to try his case there. It is not a matter of expense, as seemed to be intimated by the paper read by the gentleman who treated the subject so well, but I think so kindly, probably more kindly towards the newspapers than his own ideas would have urged him to, if he did not feel himself in a somewhat judicial position—it is not a mere matter of expense, as seemed to be intimated; it is almost impossible to prove what is a man's reputation anywhere except among his neighbors.

MR. SIMPSON, Philadelphia: Suppose it was the *New York Sun* that libeled somebody; where would you institute the prosecution under section 4 of this proposed Act?

MR. BUDD, Philadelphia: I do not suppose you could institute suit in Pennsylvania at all.

MR. CARSON, Philadelphia: Suppose it comes from the United Press?

MR. BUDD, Philadelphia: Wherever it is printed it is a libel. Wherever a matter not privileged otherwise, which is not matter fit for publication, in whatsoever paper it appears, the paper should be held responsible. The Associated Press does not enter the doors of a newspaper, and without the consent of that newspaper impress upon its pages whatever it pleases. If it is a matter fit for public information, it is not a libel in the strict sense. If it is a matter in which the truth is a defence, the present law throws sufficient protection around it. But when you get to a matter which is a libel, the invasion of a man's privacy, the treatment of a man's character improperly, putting before the world things the world has nothing to do with, then I say wherever that is done, if it is done a thousand times, in a thousand places, in each one of those places or any one of those places, the person who does the offense should be liable for it.

I am not dealing now with a question of privileged communication. I think our law supplies abundant protection there. So that at the start, we have the endeavor of the newspaper to choose its own place. The proposed Act does not say where it is published even; it says where it is printed. We can imagine a paper printed where it is not published. At one time certain Philadelphia magazines, to one of which, I think, our friend at one time contributed, were printed in Lancaster and published in Philadelphia.

MR. CARSON, Philadelphia: But we were never sued for libel.

MR. BUDD, Philadelphia: We never were, and I hope we never shall be. But I mean to say that if we had so far forgotten ourselves, we could have said under this Act, "Go to Lancaster; a certain printing house there printed this; it was never printed in Philadelphia."

MR. SIMPSON, Philadelphia: They might move all the Philadelphia printing offices to Camden.

MR. BUDD, Philadelphia: They might do that. The

language of Section 4, therefore is unfortunate in this respect. And in order to emphasize this idea the language is, "The county in which the alleged libel has been actually printed." No constructive printing will be allowed.

JUDGE SIMONTON, Dauphin: That changes the definition by making the libel consist in the printing, not the publishing; it must be printed.

MR. BUDD, Philadelphia: It is the printing if published in a public journal, but in the case of a written libel then where it is made public.

We find, therefore, in the first place, that the Act says that an action may be tried only in a place where the injury may not have been committed or done, where the damage may not have been suffered; and in the second place where the actual offense, the publication, may not have been committed. This, by itself, would, as it seems to me, be sufficient to condemn this Act. Secondly, after the action is brought, we find, in Section 5, a limitation of damages under most peculiar circumstances. If a matter libelous in itself, matter which never ought to have been published, although there may have been reasonable grounds for believing the statement in fact were true, unless there has been some actual malice, some particular desire to stab or to kill character, not a mere desire to minister, perhaps, to a prurient public taste, to give the public a communication of a racy or spicy character, which may or may not be true, which is not a matter fit for public information—unless there be some actual malice beyond what would be inferred from this, then, if the newspaper the day after finding it has made a mistake, either before or after action brought, shall publish a correction or retraction in as conspicuous a manner and place in said newspaper as was the libel published, it is to go scot free, except that actual positive damages are to be recovered. We will come to what those damages are in a moment. But what earthly good, nine times out of ten, does a mere retraction do? A man is libeled; everybody reads the libel; gets the idea there must be some truth in it, for there is no smoke

without fire. The idea goes through the community that the man has done something wrong, but next day comes along and a retraction appears. In the first place, one-half of the people would say that the newspapers were terrorized into it, and that the thing may be true all the same; that the newspapers are merciful; they will not hurt the man too much, but he may have committed the act all the same. And then the worst of it is that a number of people who have not seen the original libel, and who do see the retraction, immediately hunt it up to see what was said about their fellow-citizen, for from the retraction they see that something has been said. A retraction, therefore, is a very miserable sort of compensation to a man who has been hurt, a very miserable salve to his feelings. It may be some satisfaction to him to feel that he has humiliated the paper so as to make it take back its words, but that is all; it helps him very little in the community, unless in exceptional cases.

Then what are actual damages in a libel? What has he to show? How many men can show one dollar's actual damage from a most cruel libel? Publish the most revolting libel against a man, such as would destroy his character entirely in the community, and how can you say it has made one penny's worth of difference to him in actual dollars and cents? In accident cases and other cases the law provides for no recovery for grief and suffering of mind. If a parent lose a child through the negligence of a railroad company, he recovers the child's wages up to twenty-one years less the probable expense of a child. The parent cannot recover a penny for his actual suffering, the loss of the child's love and affection which is much more to him, and the anguish of mind, a much greater injury, than the mere loss in dollars and cents. So what is in a libel case the actual damage? What is the amount you can recover? Counsel fees? That would be a very poor way of putting it. My attention has just been called by Mr. Wister to another defect in this Act, and that is it uses the words "correction or retraction." What is a correction? What is a retraction?

It is not definite. Does a correction mean a denial of information in some particulars?

It seems to me then, that as we go along with the civil part of it, which I have been considering more particularly, that so far as the civil side of the matter is concerned, this proposed libel law would, in the first place, strike down our present idea of what a libel is; in the second place, it would render it possible for a newspaper to be sued just wherever it wanted to be, and not where the injured person wanted to sue it, or where the injury is done; and lastly, if you claim to recover substantial damages, in ninety-nine cases out of a hundred it would be simply impossible. You might have a man come into court showing that a most cruel libel had been published, and the newspaper would answer, "Yes; but we found out two days after that that it was a mistake. The libel had only run three days; the man has only been exposed and subjected to the contempt of his neighbors for three days; we retracted it on the fourth day; he cannot show a penny's loss; of course, we cannot overtake the libel wherever it has gone: we do not know where it has gone." And what is the plaintiff to get? Six cents damages—nominal damages. Or I suppose the court would correct it and probably make it forty shillings, so as to cover costs. Is that to be the answer to a man who has been ruined financially, or whose peace of mind has been ruined, who would have to go along the street day after day meeting people, the first question in whose mind would be, "Does that man believe me guilty of what has been said about me?"

Of course, the desire of this Act is to avoid excessive verdicts, but is there not a sufficient remedy at present in the control of the courts over the verdicts of juries, if they are excessive? Is not this an attempt, not to limit the powers of juries over verdicts, but to limit at the same time the power of the courts? Does not this say to the community in almost so many words, "We cannot trust juries to give fair verdicts where newspapers are concerned, and we do not trust the judiciary to reduce those verdicts if necessary." The

judiciary may be trusted to reduce verdicts in accident cases ; the judiciary may be trusted to set aside a verdict if it is against the law and the evidence in other cases; but when we come to a libel, then the newspaper, because the people demand certain things, say that, therefore, they are to be protected against the court as well as against the jury. Is not that what this Act says in so many words ? Are we prepared to say juries need it ? Are we prepared to say judges need it ? I say certainly not.

I think there is sufficient protection to be found in our law as at present on the statute book and as at present administered. Is there not sufficient protection also to be found in the liberty the press has under the doctrine of privileged communications ? Have not the courts gone very far in admitting the defence of want of negligence and want of malice ? In the case of *Briggs vs. Garrett*, that went very far. It would only have been necessary for Mr. Garrett to have sent or gone two squares to have found out that he was charging the wrong judge with the decision, instead of which he read a note openly, without anything further. And it was held in Common Pleas, No. 1, of Philadelphia, and affirmed by the Supreme Court, that that was not such negligence on the part of Mr. Garrett as would make him liable ; that the judge's conduct was a proper matter for public information. He had received a note from a reputable citizen, who had made a mistake, and on that mistake he acted, although a little extraordinary care, but still very little, would have saved him from the blunder. And that is the law of the State of Pennsylvania at the present day. And do people want greater protection than that ? Of course, Mr. Garrett had not a particle of malice and there was not sufficient negligence, as the court held, to render him liable for negligence. Is there not, then, sufficient protection to be found in the present law ?

Another thing to be noticed is this : This Act proposes to change the burden of proof. In any other crime, in any other action, a man is supposed to intend the consequences

of his own act. A man who fires a pistol and kills, is supposed to maliciously kill. He may rebut that presumption of malice, of course. But here, when the newspaper kills character, where at present you would say it was malicious or careless, the presumption is changed by this Act entirely, and you are to presume that there was no malice in the wrongful act that it did.

What more ought a reasonable person to ask than the opportunity to rebut what would seem to be the natural consequence of his own act? He has that now; but this Act asks for more.

Section 8 of the Act is hardly worth speaking of; it was so completely disposed of by my friend who preceded me, that it is not worth wasting any word upon it.

It seems to me that the whole Act is one which, if passed, would be dangerous in the extreme; that it would simply license newspapers, at their own discretion, to make whatever attacks they pleased upon private character, to bring the most private matters of a man before the world, and to do it with utter impunity. It would be a cheap advertisement for some of these papers to have a recovery against them every now and then at the cost of the nominal damages inflicted upon some very reputable man. No man can estimate the value of character.

Who steals my purse steals trash; \* \* \*  
But he that filches from me my good name  
Robs me of that which not enriches him,  
And makes me poor indeed.

This is as true as it was when it was written by Shakespeare. We cannot do too much to keep up the present barriers for the protection of character, in an age when the general tendency is to deprive a man as far as possible of his private right. To insist upon the freedom of the press, in the way in which some of our newspapers understand freedom, is to demand not freedom, but license. The freest discussion of everything of a governmental character is now privileged, and such things should freely, boldly and openly



be discussed, but at the same time we should say to the newspapers and everybody else, "The domain of private life is sacred; and, if you trespass upon that, if you drag out a man's life before the public, be very careful what you do, for you do it at your peril!" (Applause.)

MR. KRESS, Clinton: If any member of this Association wants anything stronger on the rights of the individual than has been so ably set forth by the gentlemen who have spoken, they only have to read the proposed Act itself. I do not think anybody here can have patience with one who would undertake to sustain this Act, and, therefore, I move that the further consideration of it be indefinitely postponed.

Seconded and unanimously agreed to.

MR. HAYES, Chester: I move that we now adjourn.

Seconded and agreed to.

Adjourned.

## SECOND DAY

July 9, 1896

The Association resumed its session at 10 o'clock, A. M., President Dickson in the Chair.

THE PRESIDENT: Gentlemen, you all know that the leaders of the Bar of New Jersey would be the leaders of any English-speaking Bar on either side of the Atlantic. I have great pleasure in presenting to you one of the members of that Bar who has long been *primus inter pares*, Honorable Cortlandt Parker, of Newark, New Jersey.

### ADDRESS BY HON. CORTLANDT PARKER

I feel greatly obliged, Mr. President and gentlemen, for the honor that your Association has conferred on me in asking me to address you, but I also feel very fearful that you will find the honor was scarcely deserved. Such as I have, however, I give to you, and without further preface.



**CORTLANDT PARKER**

JOHN J. T. E. LAWYER  
JOHN J. T. E. LAWYER

[illegible]



CORTLANDT PARK

## SIR MATTHEW HALE, THE LAWYER'S BEST EXEMPLAR

A chief embarrassment to a speaker on such an occasion as this lies in the choice of a satisfactory subject. Especially is this the case when he comes from another State, and is no longer young, or even middle-aged, and though still with the harness on, and resolved to wear it so long as he can be useful, has nevertheless passed beyond practical interest in the new things which agitate and occupy professional minds—in fact, would rather have things to go on without change, and yet would prefer to leave to younger men the task of defending them. Then, too, this Association, doubtless, like every other of the sort, is composed mostly of young men, next of men of middle age, so experienced that their views about all projects, changes and improvements are well fixed, whose courteous respect the advice and views of an elder brother would doubtless secure, but hardly more. Only young lawyers can a man of autumnal years hope to influence for good, and if this is his aim (and no man should come here without such aim, or with any other), his subject should be one which should tend to improve their minds and their hearts, to make them abler and better men, and thus to elevate the character of the profession. It is to these, my younger brothers especially, that I come, and whose attention I specially crave.

Many look upon the profession of the law as a trade, a means whereby a man may obtain support, at least, and perhaps wealth; and they stop there. Many more go a little further and think of it as a means for the attainment of social respectability or prominence, and of political success. A few, and the number is not increasing as time rolls on, realizing what has been well called the awfulness of life, and that the final cause of our existence is usefulness, regard livelihood, fortune, social prominence and political station, only as incidents to the true object for which the profession should be sought and entered, the object, namely, of

usefulness to the State and to our fellow-men. It is in support of this view, one daily more and more neglected and forgotten, that I propose this day to speak. It is a theme in which the elder men before me will agree with me as not unsuitable, a theme which the middle-aged will endorse, but one which should peculiarly interest the youngest and most active; but, whether or not, it will at least instruct them, and even, perhaps, who knows, may induce some to make the dedication of themselves to this high scheme of life.

And I have thought that the best way to accomplish my end was to set before this assembly some life which illustrates such a creed, and whose success proves its possibility: some life so conspicuous that it may inspire a healthful and resolute ambition. Therefore, I invite your attention to the history and character of the man who, in my judgment, is peerless among all that may be termed the heroes of the English Bar, the greatest of common-law lawyers, Matthew Hale.

Goodness seems, generally, rather antagonistic to reputation for greatness. Men act as if they thought that the great man could not be conspicuously good. Men are ashamed to be esteemed very good as well as to be thought very bad. And so the wonderful excellence of character of Hale has actually brought him into a sort of disrepute. When the lawyer calls the roll of his brethren among the great English dead, he mentions Littleton and Coke, Bacon, Blackstone, Holt, Mansfield, Kenyon, Ellenborough, Hardwicke, Eldon, Scott, Thurlow, Erskine, Brougham, and others like them; hardly ever does he name Sir Matthew Hale, though he certainly is, if not foremost, among the foremost, as well in legal literature as among lawyers, advocates and judges.

And yet it was of him that one of the best of English poets, a century after his death, sang:

Immortal Hale! for deep discernment praised  
And sound integrity, not more than famed  
For sanctity of manners undefiled.

Matthew Hale was born November 1, 1609, four years before Sir Edward Coke became Chief Justice, who, at that

time was sixty-two years of age, but lived in full possession of his faculties, though not in judicial office, twenty-one years longer. He was Chief Justice but some four years. After that, and in the leisure of an enforced retirement, he wrote his institutes and part of his reports. It was as his light went out that Hale's began to shine.

His parents died, his mother when he was three, his father when he was five years old. A Puritan kinsman took him and well nigh led him to a dissenting pulpit. But the boy was gay. He was, when young, too much enamored of stage entertainments, of company and of dress. He addicted himself, too, to gymnastic exercises, and once came near entering the army, exhibiting a vivacious and impulsive temperament. He disliked lawyers, regarding them as a barbarous race, unfit for anything beyond their own profession. Happening, however, to have a lawsuit himself, in which the learned Sergeant Glanvil was his counsel, he was persuaded by him, because of the discovery of his rare aptitude for the profession, to study law, and after seven years in Lincoln's Inn, spent in the severest labor and in quiet perfecting of his character, he was called to the Bar.

This perfecting of his character was deliberate, resolute and triumphant. Reproaching himself for indolence, for love of pleasure, for vanity and even for convivial excess, he studied sixteen hours daily for a considerable space of time; he forswore the theatre, which had been his chief delight; he eschewed personal adornment, passing to the verge of self-neglect; and he gave up all use of intoxicating liquor. He did all from principle. He adopted the theory of living for usefulness as the only life worth living, and from the beginning he was an humble, pious and zealous professed Christian. Without exaggeration it may be said that God was in all his thoughts. His rules of conduct have become classical. For the morning they bound him to thankfulness, faith and prayer. For the day, following his professional calling with faithfulness, diligence and cheerfulness. In meat and drink, moderation. In solitude, meditation. In



company, doing good to them. "Be reverent to God. Be mindful of example." In the evening, self-examination, thankfulness and prayer.

"Faithfulness, diligence and cheerfulness" distinguished his studies. Says one biographer, he took nothing upon trust, was unwearied in searching records, kept careful commonplace books, extended his studies not only in law, but in all branches of inquiry. The civil law, mathematics and natural philosophy, medicine, anatomy, surgery, history, chronology and divinity were all among his topics of investigation. And all, mind, not for selfish advancement, but because thus only did he think he could fit himself adequately to discharge duty.

Such laborious preparation ushered him almost immediately into successful practice. Coming to the Bar, it is supposed at twenty-seven, he was, four years after, assigned as counsel to the Earl of Strafford on his arraignment. Four years later when, therefore, but thirty-five, he appeared for Archbishop Laud, and, though junior counsel, is stated to have prepared and delivered the argument in his behalf. He was afterwards retained for and against the Parliament in questions relating to the interests of Oxford; for the eleven members of Parliament who, in 1647, were obnoxious to Cromwell, and were impeached and banished; and finally, for the ill-fated King Charles, who, the following year, was brought to trial. The king, with politic dignity, knowing how impossible it was to obtain an acquittal, stood calmly upon a denial of jurisdiction upon the part of those who assumed to try him. This course, and the paper in which the plea was set forth, was the work, so it is said, of Sir Matthew Hale.

At this early period, Hale had made progress in the "Pleas of the Crown," the book upon which his fame as a lawyer largely rests. But the troubles of the country compelled him to lay his manuscripts aside. He hid them behind the wainscot of his study, observing that there would be no more occasion for them till the king should be restored.

As the disorders of the time went on, more prosecutions occurred in which Hale appeared to defend. Three noted cases are especially mentioned in which he was distinguished for bravery and efficiency. In one, he was threatened by the Attorney-General for appearing against the government, to which he answered, that he was defending the law and doing his duty, and was not to be daunted by any threats.

His boldness and bravery gained him the admiration and confidence of the party he opposed. In January, 1651, he was appointed by Parliament one of the committee for considering the reformation of the law. Yet the following June he defended Christopher Love, persecuted for treason, and with such prudence, tact and skill as evince the highest ability of an advocate. It was a most interesting trial, well worthy of study as illustrative of the times—those days when blood was of so little importance, and when one religious man took the life of another with a readiness in strong contrast with the mercifulness of modern days. Perhaps I may be pardoned for briefly digressing to sketch this curious trial. Love was a Presbyterian minister in London—young, but evidently gifted and intensely zealous. The execution of the king shocked him and many of his cloth and his persuasion. They did not believe in Cromwell or in the Commonwealth. And Love and his allies met together, conferring in opposition to the powers that were, and exchanging intelligence respecting affairs in Scotland, where the friends of the king then congregated, and from whence, it was evidently hoped, assistance for his restoration was to come. Love, as being most active among the clergy engaged, and one Gibbons, a tailor, were convicted by a High Court and beheaded, though there seemed to have been no stronger case against them than designs, not carried out by any overt act.

There was no indictment and no jury. There was what was entitled "A charge of High Treason and other High Crimes and Offences exhibited to the High Court of Justice by Edmond Prideaux, Attorney-General for the Common-

wealth of England, for and on behalf of the keepers of the liberties of England by authority of Parliament, against Christopher Love, late of London, Clerk." The defendant was arraigned and required to plead. He wished to assail the jurisdiction, but specially to have the aid of counsel and a copy of the charge, exhibiting letters from several counsel stating that unless they were assigned by the court they could not help him. Nearly a whole day was occupied in compelling him to plead. At last, as sentence was about to pass for contumacy, he pleaded not guilty, and the trial began. It proceeded for five days, during which the defendant was compelled to defend himself against at least three opposing counsel upon the facts. At the close of his defence, still without any copy of the charge, the court assigned him counsel, that he named, and ordered that if they should under their hands assign any matters of law fit to be argued and presented to the court, on a short day named, the court would take it into further consideration.

This was justice, and in England, two hundred and fifty years ago!

On the fourth day after, counsel appeared. Two were excluded because they had not signed the "engagement," in other words, submitted in writing to the authority of the existing government. Hale, who had, regarding it to be his duty to acknowledge the government *de facto* whatever his opinion respecting it as one *de jure*, was then assigned, and alone conducted the defence. The report is extremely interesting. It shows that he was held in highest respect by all concerned. His clever client, who had displayed himself a wonderful acumen, was from that moment silent, evidently from thorough appreciation of his advocate, whose ability he extolled in a tract, prepared shortly before his death, and he ascribed it, with evident sincerity, to divine assistance.

It was of little effect, however. The court made short work of the case. The Attorney-General said on the sixth day, that there had been much time spent, and Mr. Love had had a fair trial and therefore he desired sentence. Love,

called upon, asked longer time, more counsel, and a copy of the charge (he had seen the face of his counsel the first time the day of his assignment, and though the defence consisted in exceptions to the charge, yet they were drawn without knowledge of its language), but all was denied, and his death on the scaffold was decreed.

The poor man's dying speech and parting prayer were most impressive. At the end, says the chronicler, he kneeled down and made a short prayer privately. Then rising up he said: "Blessed be God. I am full of joy and peace in believing. I lie down with a world of comfort, as if I were to lie down in my bed; my bed is but a short sleep, and this death is a long sleep, where I shall rest in Abraham's bosom, and in the embraces of the Lord Jesus." And then saying: "The Lord bless you!" he laid himself down upon the scaffold with his head over the block; and, when he stretched forth his hands, the executioner cut off his head at one blow.

Oh law, religion and liberty, what crimes have been committed in your names!

Not only upon this, but upon all occasions, Hale discharged the duties of his profession with rare learning, fidelity and courage. He was besides, generously charitable to his politically persecuted clients, and to those dependent upon them—depositing with a gentleman of the king's party, sums of money for distribution secret to himself as to its beneficiaries, and to them as to who was their benefactor.

He advanced regularly and rapidly in his profession, and on the 25th January, 1653, he was created a Sergeant-at-law. Cromwell was installed Protector on the 16th December of that year. He selected but one new judge, Mr. Hale. He declined. Cromwell pressed for the reason. Hale stated that he was not satisfied with the lawfulness of his authority. Cromwell replied that since he had possession of the government, he would keep it, but that he wished to rule according to the law of the land, for which purpose he had selected *him*, and that if not permitted to govern by red gowns, he would do it by red coats.

Influential and distinguished friends, legal and clerical, urged upon Hale that his duty called upon him to forego his scruples, and since he could not bring in the king, at least give to the people a wise and honest executive of the general law. At last he consented; evidently resolving upon the course he afterwards pursued, not to meddle with political offences. Soon, however, he made no exception as to criminal cases, but refused all, and confined himself to the trial of civil causes only. Before this, though, he on more than one occasion contravened in his decisions the wishes, perhaps the will, of the Protector. Once Cromwell, enraged, told him he was not fit to be a judge. He replied that it was very true. But the order of which the Protector complained, nevertheless stood.

While judge he was chosen one of five knights of the Shire for the County of Gloucester. He was distinguished in Parliament as a conservative moderate man. That body was, however, soon dissolved. Two others, each of short duration, preceded the death of Cromwell. And then Hale, seeing the opportunity, declined reappointment as judge, and refused to recognize the ruling authority.

A new Parliament, called the "Convention," met in April, 1660. Hale was a member, and bore a steady part in the restoration of the legitimate sovereign. Yet he was too wise not to see that even this rightful change was fraught with danger. He sought to limit the prerogative whose abuse had dethroned and destroyed the first Charles. But the temper of the times defeated his patriotic suggestions. At such times men rush from one extreme to another. But says Bishop Burnett, asserting what all mankind now acknowledge, "To the king's coming in *without* conditions may be well imputed all the errors of his reign."

One cannot do justice to the serene and lofty character of Hale without study of his conduct and thoughts upon this great historical event. Among his manuscripts was a paper dated five days after the king was proclaimed, entitled "Considerations concerning the present and late occurrences,

for my own use and observation." It is a monologue of a Christian philosopher, recognizing the hand of Providence in all, the littleness of those who think *they* effect the results, the childishness of their future expectations, the baseness of insolence over those that have suffered defeat, the readiness with which the best may mistake revenge for a proper sense of justice, the danger of a procedure to wrong just because it is a reversal of what the defeated side wished and did. "There was," he wrote, "in many of the suppressed party much hypocrisy and dissimulation, much violence and oppression; but there was in them sobriety in their conversation, pretence and profession of strictness of life, prayers in their families, observation of the Sabbath. These were commendable in their use, though it may be they were in order to honour, and to disguise bad ends and actions. And I pray God it fall not out with us upon our change that our detestation of their persons and foul actions may not transport us to a contrary practice of that, which was in itself commendable, lest we grow loose in religion and good duties, and in the observation of the Sabbath, and lest we despise strictness of life, because abused by *them* to base and hypocritical ends. If this be the issue I very much fear our peace will not be lasting, nor our undertakings successful, nor restitution firm; for certainly irreligion will as soon rot *our* sinews, as hypocrisy and violence did theirs."

These sentences were unintentional prophecy.

But time forbids further to exhibit the wisdom of this document. One of his cautions may, however, be excepted. "Overmuch severity," he says, "in point of justice, as the case stands with England at this day, would, in common prudence, be the extremest injustice that could be, when the issue of it, in all probability, would be the production of new distempers, or, at least, the seeds or opportunities of them; and then justice is ill-placed or dispensed when the consequence of it must introduce, not the good and safety, but the danger and mischief, of a nation."

Acting upon the principles set forth in this interesting

paper, Hale joined the king in the project of indemnity, drew and supported a bill extending it, and early in July, 1660, it passed the Commons.

It is not to be wondered at that the wise Clarendon sought out this distinguished lawyer and Christian sage, as the fit recipient of the highest dignity. He found him reluctant. And among his papers was one entitled "Reasons why I desire to be spared from any place of public employment," which is both curious and photographic. The smallness of his estate, \$2,500 a year, comes first in order. "It is most unseemly for a judge to be necessitous; besides, it will necessarily lift up the minds of my children above their fortunes, which will be my grief, and their ruin." Another reason was his former service and the turbulence of affairs. Another, unfitting infirmities, such as an averseness to the pomp and grandeur of judicial office, and too much pity, clemency and tenderness in cases of life and death. Another, "I am sure in the condition of a private man declining preferment, my might will be three to one over what it will be in a place of judicature."

But, he concludes, "If after all this, there must be a necessity of undertaking an employment, I desire: 1. It may be in such a court and way as may be most suitable to my course of studies and education. 2. That it may be the lowest place that may be, that I may avoid envy. One of his Majesty's counsel in ordinary, or, at most, the place of a puisne judge in the Common Pleas would suit me best."

What a picture of modesty, wisdom and virtue!

Lord Clarendon knew his duty, however, and on the 7th of November, 1660, Hale was made Lord Chief Baron of England.

No sketch of this lofty character can omit his self-prescribed rules of conduct, called by him: "Things necessary to be continually had in remembrance:"

I. That in the administration of justice I am entrusted for God, the King and country; and therefore

II. That it be done, first, uprightly; secondly, deliberately; thirdly, resolutely.

III. That I rest not upon my own understanding and strength, but implore and rest upon the direction and strength of God.

IV. That in the execution of justice I carefully lay aside my own passions, and not give way to them, however provoked.

V. That I be wholly intent upon the business I am about, remitting all other cares and thoughts as unseasonable and interruptions.

VI. That I suffer not myself to be prepossessed with any judgment at all, till the whole business and both parties be heard.

VII. That I never engage myself in the beginning of any cause, but reserve myself unprejudiced till the whole be heard.

VIII. That in business capital, though my nature prompt me to pity, yet to consider that there is also a pity due to the country.

IX. That I be not too rigid in matters purely conscientious, where all the harm is diversity of judgment.

X. That I be not biased with compassion to the poor or favour to the rich, in point of justice.

XI. That popular or court applause, or distaste, have no influence into anything I do in point of distribution of justice.

XII. Not to be solicitous what men will say or think, so long as I keep myself exactly according to the rules of justice.

XIII. If in criminals it be in a measure cast to incline to mercy and acquittal.

XIV. In criminals that consist merely in words when no more harm ensues, moderation is no injustice.

XV. In criminals of blood, if the fact be evident, severity is justice.



XVI. To abhor all private solicitations, of what kind and by whomsoever, in matters depending.

XVII. To charge my servants: 1. Not to interpose in any business whatsoever. 2. Not to take more than their known fees. 3. Not to give any undue preference to causes. 4. Not to recommend counsel.

XVIII. To be short and sparing at meals, that I may be the fitter for business.

If these rules should, any of them, seem axiomatic now, let us remember the difference between this and that age.

And yet it is still important that judges should remember "not to be biased by compassion to the poor or favour to the rich;" to beware of "popular applause or distaste," and "not to be solicitous what men will say or think." Even judges who are beyond bribes are not, we fear, however it may be unintended and to themselves unknown, beyond the seductions of popularity.

I cannot continue to follow up the history of this great man and lovely character. After greatly popularizing the exchequer by his urbanity, integrity and ability, in 1671, Sir John Keyling, Chief Justice of the King's Bench, having died, Sir Matthew Hale succeeded him. His higher station only enlarged his usefulness. Ill health soon after befell him; asthma and dropsy, probably what is now called Bright's disease, seized upon him and drove him in 1675 to resign his office. He had before "petitioned for his writ of ease." The king had said, "stay and work less." To this he would not consent. A friendly contest ensued, which was ended by a personal surrender of his office to the king, who insisted on his at least receiving his pension for life, and that he should still regard him as one of his judges. He struggled against receiving this emolument and finally devoted it, poor though he was, to charitable uses.

He did not live long after this. He retired to his country home, and there, in quiet resignation, employing his time in study, mostly religious and philosophical, blessed to the

very last with the use of his reason, and cheered by the presence of family and of devoted friends, he passed in the afternoon of Christmas, 1676 (a little more than two centuries ago), to his everlasting reward.

Sir Matthew Hale is my hero lawyer ! No man ever at the Bar excelled him in variety and thoroughness of legal learning ; none in practical wisdom and sound round-about common sense ; none in the love of his profession or in its diligent study ; none in contributions to legal science ; the realm of legal authorship ; and few ever equalled him in professional chivalry, in devotion to the right ; in faithfulness to whatever cause he had in hand ; in love of the truth ; in hatred of the untrue ; in sternness in the performance of duty, or in tenderness when compatible with it.

No greater man ever dignified the British Bar or Bench, even though you confine your estimate to his forensic and judicial merits. Says Lord Campbell, he was not merely by far the best common law judge, but by far the best equity judge of his time. He not only admirably disposed of the business on the equity side of the Exchequer, but was frequently called into the Court of Chancery as assessor by Lord Chancellor Clarendon and Lord Keeper Bridgman. Lord Nottingham, the father of equity, worshipped Hale as his great master.

The same author also says :

As a jurist, I doubt whether sufficient justice has yet been done to his memory. Coke had as much professional knowledge, but he considered what he had amassed as a mere congeries of arbitrary rules, without principle, system or dependence. Hale cultivated law as a science. \* \* \* He had a fine head for analysis. \* \* \* He beautifully methodized the code which he found to be in force ; and he gave invaluable instructions as to the manner in which it might be improved. \* \* \* He published " An Analysis of the Civil Part of our Law," which supplied Sir William Blackstone with the plan of his immortal commentaries. He likewise left behind him a tract entitled " Considerations touching the Amendment of the Law." On his suggestions chiefly are founded the ameliorations of English law which have occurred during the reigns of William IV and Queen Victoria. England, when Lord Campbell wrote, had not

yet a Registry of Deeds, but this was not the fault of Hale, for he wrote a book on purpose to recommend it.

Having completed his "Common Place Book" he, in the early part of his career, wrote many law treatises. The famous "History of the Pleas of the Crown," the "History of the Common Law of England," were published during his life. After his death, from a mass of valuable manuscript, Mr. Hargrave published his excellent "De Portubus Maris," and "Jurisdiction of the Lords' House of Parliament," pronounced to be of rarest merit.

He was a scientist, a metaphysician, and a theologian of high attainments besides being a lawyer. I will not weary you with a list of his works, mainly published after his death. They attest his industry, versatility and ability.

But it was as a man, a lover of his kind, an humble believer in and follower of the Bible and its rules, that he was most conspicuous and is most to be admired and followed. It was in this that he was indeed the hero. Think what a living protest such a life as his was against the violence, the cant, and the hypocrisy of the days of the Commonwealth and of Cromwell. Think again what a protest it was against the frivolity and lewdness, the vicious and the frivolous indulgence of the days of Charles II. How brave he was that could stand up without flinching and defend, so far as the Court, so called, would permit him, the misguided, silly, yet courageous and dignified King Charles! How wise he was to so advise him as that his royal dignity was unimpaired, and Englishmen were led ever since to regard him as their Martyr Monarch! How charitable he was that he could obey professional duty in the defence of men and principles for which he had no sympathy! How brave he was again when he gave his professional aid to Strafford, set upon and made a victim by the stern fanatics of his day; to Laud, regarded by so many in England as a hypocrite and tyrant, an adherent of Rome while professing hostility to it; to Love, entrapped, tried and destroyed by his former co-religionists in hostility to the established Church, and so far friends and allies, with

whose conduct and doctrines Hale had no more sympathy than with those of the men who slew his king! How brave he was, calmly to oppose and thwart Cromwell himself, and afterwards subdue him by Christian dignity and humility. His was that grandest, rarest bravery, moral courage; the courage inspired by piety; the courage that dared proclaim its origin, and enable him to walk throughout his life in such scenes as those eventful years presented, amidst such people as surrounded Cromwell and Charles, an unpretentious yet avowed Christian—a living rebuke to the hypocrites and extremists who surrounded the one, and the profligates and harlots who formed the court of the other. A Christian—not a mere religionist, recognizing all mankind as brethren, charitable to the faults of all, acknowledging the excellencies of all; though a churchman, fraternizing with Baxter on the one side, and with Tillotson, Burnet, and other bishops on the other; a Christian with no religion that *he* thought worthy himself to speak of, yet with so much as that if canonized as a saint, all would say, Amen. A Christian, and a Christian lawyer in the days of the voluptuary, corrupt and spendthrift Scroggs, one of his successors, and the coarse, fetid, sharp, intemperate and vulgar Saunders, who was afterwards another. A Christian, to use the words of one of his biographers, who “regarded the religion that is genuine as more than notion, or profession, or form, as consisting in such great and plain things as are *necessary*; and wherever he saw *them* in operation, there he recognized the secret and invisible Church of the Most High God; *the* Church, constituted of all who by faith in Christ and by the energy and participation of the Spirit of Christ, are united to *him*.”

That I may not seem a mere enthusiast, speaking without warrant or support, let me quote the words of others in regard to this truly great man. Lord Chancellor Northington, then Lord Keeper Henley, called him “one of the ablest and most learned judges that ever adorned the profession.” Mr. Justice Grose said he was “one of the most able lawyers that ever sat in Westminster Hall; as correct, as learned and

as humane a judge as ever graced a bench of justice." Lord Kenyon said that "the operations of his vast mind always call for the greatest attention to any work that bears his name." In delivering judgment, alluding to a case cited from *Ventris* in argument, the same great judge observed "that it ought not to be treated lightly or overturned without great consideration, because it had the sanction of Lord Hale's name," and in another case he mentioned him as "one of the greatest and best men who ever sat in judgment." Lord Erskine, certainly the most eloquent man the English Bar ever produced, among frequent testimonies, mentioned him as "the never-to-be-forgotten Sir Matthew Hale, whose faith in Christianity is an exalted commentary upon its truth and reason, and whose life was a glorious example of its fruits; whose justice, drawn from the pure fountain of the Christian Dispensation, will be, in all ages, the subject of the highest reverence and admiration." Edmund Burke, praising Cromwell's wisdom in selecting the dispensers of justice, instanced Lord Hale; and said that "in the appointment he gave to that age and to all posterity the most brilliant example of sincere and fervent piety, exact justice, and profound jurisprudence." An English Attorney-General, Sir Samuel Shepherd, mentioned him as "the most learned man that ever adorned the Bench; the most even man that ever blessed domestic life; the most eminent man that ever advanced the progress of science; and also one of the best and most purely religious men that ever lived." Lord Ellenborough spoke of him as "one of the greatest judges that ever sat in Westminster Hall—venerable, as well for the sanctity of his character as for the profundity of his learning." Dwarries, in his "Statutes," regards him as a "powerful—almost an insuperable authority."

Lord Campbell closes a biography which is well-nigh a continued panegyric with the words of the equally great and good Richard Baxter, his neighbor and his friend :

Sir Matthew Hale, that unwearied student, that prudent man, that solid philosopher, that famous lawyer; that pillar and basis of

justice (who would not have done an unjust act for any worldly price or motive) the ornament of His Majesty's government and honor of England, the highest faculty of the soul of Westminster Hall, and pattern to all the reverend and honorable judges, that goodly, serious, practical Christian, the lover of goodness and of all good men ; \* \* \* that great contemner of the riches, pomp and vanity of the world ; that pattern of honest plainness and humility, who, while he fled from the honours that pursued him, was yet Lord Chief Justice of the King's Bench, after his long being Lord Chief Baron of the Exchequer ; living and dying, entering on, using and voluntarily surrounding his place of judicature with the most universal love and honour and praise that ever did English subject in this age or any that just history doth record.

I confess to a motive for taking for my special theme this incomparable example of the Christian lawyer—a motive, not only because I speak specially to young men to whom such an example, would they but seek to follow it, is simply priceless, but because I would hold up before them, just at this time, this contrast to another member of that profession, eloquent, industrious, untiring, gifted in the highest degree, and more dangerous because his private character is beyond reproach and his heart seems full of native tenderness ; who, in our time, making use of language seductively attractive, rivals the description given by the Apostle of the great enemy of mankind, and “goeth about as a roaring lion seeking whom he may devour,” ridiculing the faith which, did he but know it, has made *him*, sneering at the Book which has civilized the world, denying the Lord who bought him, the God from whose hand the universe proceeds, and whose influence with the young, and, I much fear, with young lawyers, is drawing them away from religion, its hopes and its consolations, and plunging them into the darkness and misery of unbelief.

Against his teachings, against the teachings and the doubts of this era of mental and moral unrest—the pride under pseudo humility which underlies and is receptive of agnosticism ; against the materialism which is degrading mankind into worshipers of gold ; which is degrading the noblest of professions (save one) into a mere trade, a means

of livelihood alone, or a means of bettering fortune or winning political place or fame; against the examples, alas! too numerous, of men who have made vice and infidelity and covetousness almost attractive by studiousness, learning, eloquence and, sometimes, even judicial integrity, I place before my young brethren, whom I see for the first and probably the last time, the name and life of Matthew Hale as the exemplar they should seek to copy.

He was not a genius. He was, under God, self-made. He had not even a passion, originally, for the law. In fact, he ignorantly rather despised it. He was not eloquent. History says nothing of his oratory that it might not say of many another. But he was a student. Men, in his day, though graduates of Oxford or Cambridge, studied law seven years. And they studied it, too. Sixteen hours a day, according to tradition, did the youthful Hale study his profession. Nor can any man be a great lawyer without great study. In his studies he "took nothing upon trust," he sought original records, he made common-place books; he attended trials; he practised debates—in every way he strove to perfect all his faculties. He was a gymnast and a fencer, too, and strict always in regimen. Nor was he only a law student. He sought information in every department. Physics and metaphysics, philosophy, mathematics, and with these architecture and arts employed his mind, were the theme of frequent conversations with his friend Baxter, and ancient authors, Greek and Roman, with those then modern, in that day of inquiry and doubt, were familiar to them both. With all this he was especially a Christian scholar, whose assured faith never faltered.

If any one should say that the man was too great for an example, that no one can hope to rival or equal him, I answer that that is no reason why such an example should not be followed, though afar off, and without hope of full attainment. Aim high if you would reach high—if you reach not as high as you aim, you will, nevertheless, reach greater height than those who never look beyond their level.

You can do all the things doing which in his case carried him to the summit. You can resolve to despise all minor motives and to be governed only by the resolution to be useful in your day and generation, as useful as your talent, your efforts, and your opportunity can enable you to be. You can resolve that you will live in the fear of heaven, and not in the fear of aught else. You can train your body to be the willing servant of your mind and will, their subject and slave, so that it shall minister to all intellectual success. You can restrain appetite, mortify all unworthy desires, and make health and its retention a duty. You can study, can condemn yourselves if you will, to the acquisition of learning, faithfully employing your time in professional and kindred literature. You can wait and be ready, aye, even prefer to wait, for years—one, two, three, four, five or seven years, without practice, while you are learning what when you do begin will send you rapidly to the head of the line and there keep you throughout your lives, acknowledged and famous leaders.

I tell you, you that wish to be great lawyers, men of highest distinction, you cannot—*cannot* unless you “learn to labor and to wait”—labor in your studies;—labor in observation of successful and famous men;—labor in the debating club; labor hard, devoting daily as many hours as your physical strength will permit; and unless you learn to *wait*—patiently, for many years—wait, till by the process of study you feel yourselves fit, actually fit for highest thought and highest rank.

Look through legal biography. It is possible, barely possible, that men have left their preceptors, ready for the battle of life, and that they have gone on thenceforth, conquering and to conquer. But if such cases have ever occurred, there was in no case great attainment, and generally, men’s ultimate reputation is in direct proportion to their early obscurity and want of repute. Few, indeed, are the instances in which grand success was not the result of resolute studious waiting.



There are many whose names are better known to us of this day and generation than is that of Lord Hale, who walking as he walked, though at a great distance behind, yet were of like character and principles.

Such was Lord Selborne, of England, whose life of unpretending religious usefulness, and whose taste expressed in a charming collection of sacred lyrics, crown his lofty reputation as a scholar, a lawyer and a statesman. Such are many others among the living, of whom, for that reason, I will not speak. Such in New York were the simple-hearted and lowly, yet world-wide famous Kent, the eloquent and commanding Griffin, David B. Ogden, of whom Chief Justice Marshall said that his statements of his cases argued them, but who, great lawyer and advocate as he was, had equal repute as a Christian man. Daniel Lord, so long the most famous mercantile lawyer of that City, and known to all, beside, for his moral and religious excellency. Charles O'Connor, leader of the New York Bar, in his own denomination devout and pronounced. Such, in my own State, was the great and good Theodore Frelinghuysen, the best man, I have always thought, I ever knew, the warm mellow light of whose beautiful Christianity absolutely paled his reputation as advocate and lawyer—and yet an advocate unsurpassed, a lawyer sound, discriminating and safe. Such, too, were the astute, learned and upright Hornblower, the courtly and equally learned and excellent Vroom, the admirable and richly-endowed Chancellor Green, in many respects the pride of our judiciary. Such were those luminaries of the Pennsylvania Bar, the Philadelphia triumvirate, Sergeant, Chauncey and Binney, and, among later men, the powerful Jeremiah S. Black. Such your great Chief Justice McKean, your Sharswood, Dallas, Judge McKennan, Peter A. Brown, Strong, Meredith, Grier. Such were Parsons and Mason and Dexter and Parker, and many another of the Massachusetts Bar. Such Chief Justice Marshall and many others in the South, and such crowds in every State. For, to the everlasting honor of the legal

fraternity be it said, nor is it a small argument for the Christian faith, that it is rare indeed to find a member of the profession which is most accustomed to weigh evidence and explore intricacies of fact and doctrine who is not either a professed Christian, aiding in his own way, and in more or less degree, in the support of the Gospel, or who is not so full of respect for its tenets and its morality, as to treat them with all deference, and advocate their promulgation and adoption. And if it be not true that *all* the greatest lawyers are zealous Christians, it is nevertheless true that among the greatest in all generations have most zealous Christians been found.

I ask to be allowed to select from the roll of great American lawyers one name as eminently worthy to stand beside that of Matthew Hale; I mean Horace Binney, of Philadelphia. This lovely character adorned the profession through one of the longest of lives, having exceeded ninety-five years before God took him. He was a lawyer of lawyers, a deep, constant student, most learned, judicious and forcible in every department of the profession, loving the law and its practice with passionate attachment, upright, genial, charitable, patriotic, and, above everything else, a devoted, humble Christian. He would have thought it the highest encomium to be likened to Matthew Hale, and yet the correctness of the parallel will, I think, be instantly acknowledged. Says Judge Strong concerning him, speaking of 1815:

The eminent leaders of the Bar had in a great degree retired from active business, and soon aftermost of them departed from life. The field was clear, and with the exception of Mr. Sergeant and Mr. Chauncey, his constant friends, he was almost without a rival. But this caused no relaxation of his energy. The habits he had formed, his love of study for study's sake, and his deep-seated convictions of duty, overcame all tendency to inertness, and he continued till the close of his professional life as heartily devoted to it and as mindful of its claims as he was in the first flush of his manhood. He had one cardinal principle, which he regarded as the secret of his success. It was to attend to no calling but his profes-

sion. \* \* \* He listened, no, not for a moment, to any invitations to speculate in stocks or real estate, or to take part in any kind of trade. \* \* \* He resisted calls to public life. Before he was fifty years old he had been twice offered a seat on the Supreme Court of his State, and once, at least, if not twice, he was tendered a commission to be a judge of the Supreme Court of the United States. All these offers he promptly declined. It was not because he did not value distinction, and not because he did not know his own superior fitness for the posts offered, but he valued excellence above place, and his chosen road to excellence was the path he had marked out. \* \* \* He would not suffer himself to be diverted from entire devotion to his profession. \* \* \* "Public reputation," said he, "is generally empty, and oftentimes false, but the respect and affection of one's own kindred and personal friends, ah! that is delightful." In 1850, then 70 years old, he withdrew from professional labor, but \* \* \* he did not abandon his habits of study. He turned with new zest to what had ever been for him a delight. He always had a vigorous appetite for the best literature, especially for that which was moral and religious, and this increased as he grew older. He was a good Spanish and French scholar. Books in French and Spanish he was fond of, as also history, metaphysics, poetry and theology. Of the latter subject he was a close student. He was a firm believer in the truths of Divine revelation, and an habitual reader of the Bible, a consistent member of the Protestant Episcopal Church, a leading member of church conventions and greatly useful in them. He carried his religion into his daily life. It was a controlling power in his business, in the formation of his judgments, and in his intercourse with others. It was the basis of his fidelity to his clients, and his unwillingness to do injustice to opponents, his courtesy, his candor and his personal enjoyments. His last days were illumined by a calm reliance upon his Redeemer and by a perfect willingness to meet his summons whenever it might come.

In every aspect he was symmetrical, with no faculty undeveloped or distorted, with not even an excellence overgrown at the expense of any other—throughout both great and good.

It is time that I close. I come to this assembly with three exemplars. I propose to you Hale, Frelinghuysen, Binney—selecting them from the large number of similar characters because of their eminence in regard of the object and motive of exertion. They did not live for money. They did not live for office. They did not live for fame. They

did live for usefulness. They did live in the acknowledged fear and love of their Maker, and subordinated all things human to the Divine. And without specially great parts, or special advantages, they lived, successfully, happily,—yes—living protests as they were against inferior motives, triumphantly. They sought no distinction. Everything came to them. And they still live, embalmed. Two hundred and seventy years have not buried the greatest of them. It is a larger world now, and so many other men claim memory that the others may come to sooner oblivion. But it will be long first, and all three have another life, of which time and change can never deprive them. Be it yours, my friends, to follow them, and make the world richer for your existence.

There stands, if the commune has not destroyed it, at the great stairway leading to the court rooms in the halls of justice, in Paris, a statue which inspired me with profound emotion. It is that of Malesherbes, the brave defender of Louis XVI (as Hale was of Charles I,) on his trial before the crowd of cowards, fanatics and assassins which decreed his death. He was a man of three-score years and ten. He had been a minister under the king, distinguished, though, for the boldness with which he then stood up for the people and aided progress. He retired from office defeated while wrong counsels ruled the hour. But when his king was dethroned, accused, and in danger, he came bravely to the front, and begged and was accorded the dangerous privilege of joining in his defence. Fearlessly did he plead his fore-doomed cause, before the eight hundred who were accusers as well as judges, though knowing well that he thereby invited for himself the death he strove to avert from his unhappy king. That death he met. Ere long, he and his family followed Louis to the guillotine, their only crime this his brave defence. Yet, it seems to me, it was reward enough for all, that there, just there, where every advocate in Paris must forever see it, his statue should be set—its calm duty-loving eyes invoking the veneration of the profession

through all the ages, inscribed with the epitaph which epitomizes his fame "*Strenue semper fidelis regi suo, in solio veritatem, praesidium in carcere, attulit.*" Ever faithful, he brought to his king when on his throne, the truth; when dethroned and in prison, he was his king's defence.

Moral courage—bravery for the truth as one sees the truth—for the helpless, the greater in proportion to their helplessness—energy, study, effort, not simply for gain or fame, but with the motive, always, of usefulness; as a minister of law, a necessary agent in maintaining civilization and the order of society, this is the duty—its practice should be the enjoyment, and, on this earth, the reward of the conscientious and worthy advocate.

MR. ASHHURST, Philadelphia: We all must feel how deep a debt of gratitude we owe to our friend, Mr. Parker, who has come to us over this long and weary journey, to take back our minds from the hurry and anxious struggle of to-day, to repose them upon the great and beautiful examples of the past, and to make us think what those duties and characteristics of a lawyer are, and ought to be, as we were taught in our youth, and as we are too apt to forget in these days of our advance in life. We cannot express too much our gratitude to Mr. Parker for the lesson and for the example he has so beautifully set before us. Our by-laws, Mr. President, permit us to elect, from the eminent lawyers of other States, honorary members of this Association, and I move you, therefore, Mr. President, that in recognition of the debt which we owe to our friend, Mr. Cortlandt Parker, for the lesson he has come at such considerable exertion and inconvenience to bestow upon us, he be elected an honorary member of this Association; and that we tender him this honorary membership together with our deep and heartfelt thanks for the instruction he has given us to-day.

Seconded and unanimously agreed to.

MR. PARKER: I have only to say, gentlemen, in recog-

dition of this honor that you have bestowed upon me, that I accept it with the greatest pleasure and the greatest pride.

THE PRESIDENT: The next business in order is the report of the Committee on Admissions.

MR. WETZEL, Cumberland (*Chairman*): Mr. President and gentlemen, the Committee on Admissions recommend the following names for membership in this Association.

(The list of members admitted will appear in the lists in the Appendix, which are arranged alphabetically and by counties.)

MR. RHOADS, Philadelphia: I move that the Secretary of the Association be authorized to deposit one ballot as the ballot of the Association for the admission of the members recommended.

Seconded and agreed to, and the Secretary cast the ballot admitting the members recommended by the committee.

THE PRESIDENT: The next business on the programme is to hear the report of the Committee on Organization.

JUDGE BELL, Blair: Mr. Bergner was elected Secretary of the committee and I think he has the report.

MR. BERGNER, Dauphin: The committee appointed to suggest names to be voted for at the annual election for officers of the Pennsylvania Bar Association respectfully submit the following:

VICE-PRESIDENTS:

RICHARD L. ASHHURST . . . . . Philadelphia.  
HON. AUGUSTUS S. LANDIS . . . . . Blair.  
A. D. BOYD . . . . . Fayette.  
GEORGE F. BAER . . . . . Berks.  
WILLIAM N. SEIBERT . . . . . Perry.

SECRETARY:

EDWARD P. ALLINSON . . . . . Philadelphia.

TREASURER:

WILLIAM PENN LLOYD . . . . . Cumberland.

**EXECUTIVE COMMITTEE:**

LOUIS W. HALL . . . . .	Dauphin.
EDWARD K. FOX . . . . .	Northampton.
J. B. COLAHAN, JR. . . . .	Philadelphia.
HENRY BUDD . . . . .	Philadelphia.
JOHN HOUSTON MERRILL . . . . .	Philadelphia.
ALVIN EVANS . . . . .	Cambria.
ANDREW J. KAUFFMAN . . . . .	Lancaster.
PAUL H. GAITHER . . . . .	Westmoreland.
THOMAS PATTERSON . . . . .	Allegheny.
JOHN G. READING . . . . .	Lycoming.
RODNEY A. MERCUR . . . . .	Bradford.
SAMUEL A. DAVENPORT . . . . .	Erie.
JAMES I. BROWNSON, JR. . . . .	Washington.
SMITH V. WILSON . . . . .	Clearfield.
CHARLES H. NOYES . . . . .	Warren.
FRANCIS J. KOOSER . . . . .	Somerset.
J. FRANK E. HAUSE . . . . .	Chester.
LEMUEL AMERMAN . . . . .	Lackawanna.
HENRY W. PALMER . . . . .	Luzerne.
CHARLES G. BROWN . . . . .	Huntingdon.
ANDREW A. LEISER . . . . .	Union.

C. H. BERGNER,  
*Secretary.*

MARTEN BELL,  
*Chairman Committee to Suggest Officers.*

THE PRESIDENT: You have heard the nominations; are there any additional names to be suggested by any member?

MR. PATTERSON, Allegheny: In regard to my name, which is on the list of the Executive Committee. I have served on that Committee since the organization of the Association, and I think it would be wise if a change were made. I heartily agree with the Committee on Organization in not changing the rest, but in my own case, having been one of the early members, while appreciating the honor, I should prefer to be relieved. I would suggest, therefore, with the

consent of the committee, in place of my name the name of Mr. William Scott, of the Pittsburgh Bar.

JUDGE BELL, Blair: I would just say that several members of the Allegheny County Bar insisted that our committee should not accept the resignation of Mr. Patterson, that he was a very efficient member of the Executive Committee, and that we should put him on again. We were aware that Mr. Patterson desired to retire, but we thought that the good of the Association required his continuance. I therefore trust that the Bar Association will not accept his resignation.

The report of the Committee on Nominations was then, on motion, received as read.

THE PRESIDENT: In accordance with the By-Laws, notice has been given of a proposed amendment in reference to admissions. The Chairman of the Committee on Admissions will please present it.

MR. WETZEL, Cumberland: The Committee on Admissions propose the following amendments to the By-Laws:

Article II, Section 4. Insert after the words "approval by" in the sixth line, "a majority of the Committee on Admissions," and strike out the words "ratified by three-fourths ballot of the members present and voting at the next annual or adjourned meeting of the Association."

Section 5. After the word "State," in the fifth line, insert the following: "and endorsed by three or more members of the Association."

Section 7 shall be stricken out and the following inserted in its stead: "A list of applicants admitted by the Committee on Admissions during the interim of the meetings of the Association, shall be reported at each annual meeting."

The By-Laws, thus amended, would then read as follows:

Article 2, Section 4. Any member of the Bar of the Supreme Court of Pennsylvania residing and practicing in this State; any State or Federal judge residing in this State; and any professor in a regularly organized law school in this State, who shall comply with



the requirements hereinafter set forth, may become an active member upon approval by a majority of the Committee on Admissions.

Section 5. All applications for membership must be in writing and signed by the applicant, stating, *inter alia*, his name, age, residence and date of admission to practice in the Supreme Court, commission to the bench or appointment as professor in a regularly organized law school in the State, and endorsed by three or more members of the Association; and must be accompanied by the usual admission fee.

Section 7. A list of applicants admitted by the Committee on Admissions during the interim of the meetings of the Association, shall be reported at each annual meeting.

MR. COLAHAN, Philadelphia: I move the adoption of the amendments proposed.

Duly seconded and unanimously agreed to.

MR. WILSON, Clearfield: I move we now adjourn until three o'clock this afternoon.

Adjourned.

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### AFTERNOON SESSION

The Association reconvened at 3 o'clock P. M.

THE PRESIDENT: The first business in order is the appointment of delegates to the American Bar Association; and I appoint the following gentlemen:

Hon. John B. McPherson, Dauphin; Hon. John J. Metzger, Lycoming; William L. Hall, Allegheny; with Frank H. Laird, Beaver; Henry Budd, Philadelphia; R. A. Mercur, Bradford, as alternates.

JUDGE MCPHERSON, Dauphin: I desire to present the following resolution for the consideration of the Association:

*Resolved*, That the Pennsylvania Bar Association heartily approves the settlement of international disputes by peaceable arbitration, whenever such settlement is possible; and cordially commends the efforts now being made to bring about an agreement to this end between Great Britain and the United States. It is the earnest hope of this Association that these efforts may be successful, and that similar international agreements may speedily follow, until war among civilized nations becomes impossible, save for the gravest and most imperative reasons.

Duly seconded and agreed to.

MR. ROGERS, Philadelphia : Mr. President : As one of the Board of Governors of the Lawyers' Club of Philadelphia, I desire, on their behalf, to extend an invitation to this Association and its various committees, and to the individual members of the Association, to use the rooms and all the facilities of the Lawyers' Club during the ensuing year.

We were honored in having the meetings of your Executive Committee there last December, which was followed by a reception given to you by the entire Bar of Philadelphia, alluded to in very pleasant terms by the Chairman of the Executive Committee in his report. I desire to say that one of the gratifying results of that meeting, and the reception that followed, was the accession to the ranks of our club of a number of non-resident members. Those that are non-resident members of the Club are hosts and not guests whenever they come to see us, and we do not invite them. They are welcome and entitled to be there without invitation ; but to all others we wish to say that we have no latch-strings on our doors, because our doors are always open. (Applause.) Our courtesies are yours, and I hope you will avail yourselves of them at all times, both during the ensuing year and any succeeding year, whenever you may be in Philadelphia. (Applause.)

MR. FOX, Northampton : I desire to offer this resolution :

*Resolved*, That the Committee on Law Reform consider the propriety of making changes in the salaries paid the Common Pleas Judges of this Commonwealth, and that the Committee be instructed to procure such data as to salaries paid in sister States, and such other information as may enable this Association to give this subject proper consideration.

Duly seconded and agreed to.

MR. SMITH, Allegheny : I move you that the time and place for the next annual meeting of this Association be referred to the Executive Committee hereafter to be elected with power to act.

Duly seconded and agreed to.

THE PRESIDENT: Is there any other business before the meeting? If not, a motion to proceed to the election of officers will be in order.

MR. HOPWOOD, Fayette: I move you, Mr. President, that we proceed to the election of officers.

Seconded and agreed to.

THE PRESIDENT: Nominations for President will now be in order.

MR. PATTERSON, Allegheny: I desire to place in nomination a member of the Bar of Allegheny County, who has for many years stood in the front rank of the profession in our county, and I may say, of the State. It is not, however, as to his professional qualifications that I wish to say a word, for those are written in the assignments of error he has made good in the Supreme Court. But I do wish, as a fellow-member of his Bar, to bear witness to the constant and unvarying courtesy and kindly disposition alike to the high and low, to the rich and poor, which has always marked his social life and endeared him to all the members of the Bar. As representative of the elements for which this Association stands, for which it seeks to act, and which it represents, of the highest professional tendencies, as I have said of a never-failing and unvarying courtesy, and of a reputation that is without blemish, I place in nomination P. C. Knox, Esq., of Pittsburgh, for our next President. (Applause.)

MR. SMITH, Philadelphia: As a member of the Bar of Philadelphia it gives me great pleasure to second the nomination of Mr. Knox. This Association, although but just having completed its second year, has met with success that we think we may all call distinguished; and how much that success is to be attributed to the wise and intelligent management of the executive officers, we can all appreciate; our first President, the distinguished judge from the centre of the State, Judge Simonton, has fixed the standard of that office at the highest point. It would be unbecoming in your presence, Mr. President, to speak of the estimation in which you are held by the Philadelphia Bar; but, when I say that that Bar I think

would be almost unanimous in looking upon you as a proper representative of this or any other position that you might be called upon to occupy in the profession, I feel sure I do not exaggerate. The standard having been so highly set, we now turn to the Pittsburgh Bar and accept, I am sure, with hearty good-will and entire belief—those of us who have not had any personal acquaintance with Mr. Knox or professional association with him—the high tribute that has been paid by his brother at the Bar, Mr. Patterson, and I hope that the nomination will be made an election, and that election unanimous. (Applause.)

JUDGE GREER, Butler : I move you, Mr. President, that the nominations now close.

Duly seconded and agreed to.

MR. O'CONNOR, Cambria : I move that Mr. Patterson cast the ballot of the Association for Mr. Knox for President.

Duly seconded and agreed to.

MR. PATTERSON, Allegheny : I announce that I have cast the ballot of the Association for Mr. Knox as President for the ensuing year.

THE PRESIDENT : The ballot of the Association having been cast for P. C. Knox, Esq., for President, it gives me pleasure to declare him duly elected President for the ensuing year.

Mr. HOPWOOD, Fayette : I move that Mr. Patterson, of Allegheny, be appointed a committee to conduct Mr. Knox to the chair.

Duly seconded and agreed to.

MR. KNOX, Allegheny : Gentlemen of the Bar of Pennsylvania : I feel I cannot adequately thank you for this superb compliment. It is greatly enhanced, I am told, by your unanimity. It is a matter of self-congratulation, I think, for a man to be called upon to preside at any gathering of his fellows, but to be called upon to perform that function in respect to the deliberations of the massed lines of a great and liberal profession, is a distinguished honor indeed. In this

age, gentlemen, of trusts, combinations and associations of all characters, the bond of union in which is the advancement of the material interests of the world, it is a refreshing thought to know that there are those who will combine, as we have, simply for the purpose of advancing the jurisprudence of our Commonwealth, and making it more clear and enlightened—benefits in which we share along with our fellow-citizens. It is not my intention to go further than again to repeat to you my thanks, and say to you that I shall enter upon this office fully impressed with its dignity and its incidental responsibilities. (Applause.)

**THE PRESIDENT:** The next business in order is the election of Vice-Presidents. The committee of seven have suggested the following names:

RICHARD L. ASHHURST . . . . .	Philadelphia.
HON. AUGUSTUS S. LANDIS . . . . .	Blair.
A. D. BOYD . . . . .	Fayette.
GEORG F. BAER . . . . .	Berks.
WILLIAM N. SEIBERT . . . . .	Perry.

**MR. SIMPSON, Philadelphia:** I move the nominations close and that the Secretary cast the ballot for these gentlemen as Vice-Presidents.

Seconded and agreed to.

**MR. ALLINSON, Secretary:** In accordance with the instructions of the Association, I now announce I have cast the ballot for the gentlemen named as Vice-Presidents.

**THE PRESIDENT:** The Secretary having cast the ballots for Richard L. Ashhurst, Philadelphia; Hon. Augustus S. Landis, Blair; A. D. Boyd, Fayette; George F. Baer, Berks; William N. Seibert, Perry, as Vice-Presidents, I hereby declare them to be duly elected.

**THE PRESIDENT:** The next business now in order is the nomination for Treasurer. The committee have reported the name of William Penn Lloyd for Treasurer.

**MR. COLAHAN, Philadelphia:** I move that the Secretary cast one ballot for the Treasurer, Mr. Lloyd.

Duly seconded and agreed to.

MR. ALLINSON, Secretary: The Secretary having received the instructions of the Association, casts the ballot of the Association for William Penn Lloyd as Treasurer.

THE PRESIDENT: Mr. Allinson having cast the ballot of the Association for William Penn Lloyd as Treasurer, he is hereby declared elected.

The next office to be filled is that of Secretary.

MR. BEDFORD: I move the nominations close.

Seconded and agreed to.

MR. LAIRD, Beaver: I move that Mr. Bedford cast the ballot of the Association for Mr. Allinson as Secretary.

MR. BEDFORD: I announce that, in accordance with the instructions of the Association, I have cast the ballot for Mr. Allinson as Secretary.

THE PRESIDENT: The ballot of the Association being cast for Mr. Edward P. Allinson, Secretary, I hereby declare him duly elected.

MR. HOPWOOD, Fayette: I move you that the recommendation of the committee of seven for Executive Committee be adopted, and that the Secretary cast the ballot of the Association for the gentleman named as the Executive Committee.

Seconded and agreed to.

MR. ALLINSON, Secretary: In accordance with the instructions of the Association, I announce I have cast the ballot for the following gentlemen as the

#### EXECUTIVE COMMITTEE

LOUIS W. HALL . . . . .	Dauphin.
EDWARD J. FOX . . . . .	Northampton.
J. B. COLAHAN, JR. . . . .	Philadelphia.
HENRY BUDD . . . . .	Philadelphia.
JOHN HOUSTON MERRILL . . . . .	Philadelphia.
ALVIN EVANS . . . . .	Cambria.
ANDREW J. KAUFFMAN . . . . .	Lancaster.
PAUL H. GAITHER . . . . .	Westmoreland.
THOMAS PATTERSON . . . . .	Allegheny.
JOHN G. READING . . . . .	Lycoming.
RODNEY A. MERCUR . . . . .	Bradford.

SAMUEL A. DAVENPORT . . . . Erie.  
 JAMES I. BROWNSON, JR. . . . Washington.  
 SMITH V. WILSON . . . . Clearfield.  
 CHARLES H. NOYES . . . . Warren.  
 FRANCIS J. KOOSER . . . . Somerset.  
 J. FRANK E. HAUSE . . . . Chester.  
 LEMUEL AMERMAN . . . . Lackawanna.  
 HENRY W. PALMER . . . . Luzerne.  
 CHARLES G. BROWN . . . . Huntingdon.  
 ANDREW A. LEISER . . . . Union.

THE PRESIDENT: The ballot having been cast for the gentlemen named as the Executive Committee for the ensuing year, I hereby declare them duly elected.

I now have the pleasure of presenting to you Mr. P. C. Knox, our new President.

MR. KNOX, President: Is there any further business before the Association?

MR. ALLINSON, Secretary: I beg to file the report of the Executive Committee on the account of the Treasurer. The report is as follows:

We certify that the within account is audited and found correct.

GEORGE R. BEDFORD,  
 JOHN G. READING,

*Committee of the Executive Committee.*

MR. KNOX, President: Is there any action to be taken upon this report?

MR. COLAHAN, Philadelphia: I move it be received and filed.

Duly seconded and agreed to.

MR. KNOX, President: Is there any new business to be presented to the Association? If not, a motion for adjournment is in order.

MR. SIMPSON, Philadelphia: I move that we now adjourn.  
 Seconded and agreed to.

Adjourned.

## SECOND ANNUAL BANQUET

In the evening the Association gave a banquet to its members at the Bedford Springs Hotel.

Hon. John Stewart presided as Toast Master, and the toasts were responded to as follows :

PENNSYLVANIA . . . . .	Hon. Daniel H. Hastings.
THE BAR . . . . .	Hon. Cortlandt Parker.
THE PENNSYLVANIA BAR . . . . .	John M. Reynolds, Esq.
THE BENCH . . . . .	Hon. Henry W. Palmer.
THE SENATE . . . . .	Hon. William U. Brewer.
THE HOUSE OF REPRESENTATIVES .	George F. Baer, Esq.
THE CLIENT . . . . .	C. La Rue Munson, Esq.
OURSELVES: THE BAR ASSOCIATION .	Hampton L. Carson, Esq.







CONGRESS HALL.

FROM PHOTOGRAPH OF 1895

## APPENDIX

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### CONGRESS HALL, PHILADELPHIA

HON. SAMUEL W. PENNYPACKER, LL.D., Philadelphia

On September 16, 1895, the Common Pleas No. 2 of Philadelphia County sat for the last time in Congress Hall, at the southeast corner of Sixth and Chestnut Streets. The Hall had been occupied by that Court continuously from its organization in 1875, and before that time by the District Court of the City and County of Philadelphia. It had been the scene of many great trials, and of many of the greatest forensic efforts by the leaders of the Philadelphia Bar. On the day above mentioned, and in order that the occasion might be fitly marked, a large attendance of the Bench and Bar was had, and an address by Hon. Samuel W. Pennypacker, an Associate Judge of the Court, was delivered.

The Hon. John Innes Clark Hare, LL. D., President of the Court, occupied the chair, and upon the Bench with him, in addition to his associates, Hon. Samuel W. Pennypacker and Hon. Mayer Sulzberger, there were present the following Judges: Justices James T. Mitchell and D. Newlin Fell, of the Supreme Court; Judges James Gay Gordon and Theodore F. Jenkins, of the Common Pleas, and Hon. F. Carroll Brewster, of the Old Court of Common Pleas and formerly Attorney-General. There was a large attendance of the Bar. Judge Pennypacker's address was listened to with the greatest attention and pleasure, and with feelings of the liveliest and most profound satisfaction. At its conclusion, Judge Hare, in a few remarks, referred to the history of the Hall and to his own long and happy associations with the place, as well as with his colleagues and with the Bar during his judicial career. It was the unanimous sentiment of the members of the Bench and Bar

then present, in which it was felt that the entire Bench and Bar of Pennsylvania would most cordially concur, that the learned, instructive and interesting paper of Judge Pennypacker should be preserved, and to that end it was resolved that the thanks of the Bench and Bar should be presented to Judge Pennypacker, and that the address should be printed.

The thanks of the profession were then tendered to Judge Pennypacker; and Edward Shippen, Samuel Dickson and George Tucker Bispham were appointed a committee to cause the address to be printed.

[By consent of the Committee, the Committee on Legal Biography and History of the Pennsylvania Bar Association are accorded the privilege of reprinting the above minute and the following address].

"When your children ask their fathers in time to come, saying, What mean ye by these stones? Then ye shall answer them.—Joshua, iv. : 6, 7.

"*Les grands édifices, comme les grands montagnes, sont l'ouvrage des siècles.*"—Notre Dame de Paris, by Victor Hugo.

*Gentlemen of the Philadelphia Bar :<sup>1</sup>*

It is proper and fitting that the Court of Common Pleas No. 2, in finally departing from the building in which its sessions have for so long a time been held, should recall the remarkable associations of the venerable structure. The events of human life are necessarily connected with localities. The career of a man is somewhat influenced by the house in which he was born and the place he calls home, and in the growth and development of nations such buildings as the Parthenon, the Pyramids, St. Peter's, the Prinzen Hof at Delft, Westminster Abbey, and Independence Hall, about which important memories cluster, become an inspiration for present action and an incentive for future endeavor. When we search with due diligence we find good in everything, and sermons in stones and bricks.

The idea of the erection of a hall for the use of the county originated with the celebrated lawyer, Andrew Hamilton, to whose efforts we owe also the State House. He, as early as 1736, secured the passage of a resolution by the Assembly of Pennsylvania, looking to the accomplishment of this purpose. The Act of February 17, 1762, provided

<sup>1</sup> In the preparation of this address I have used freely Thompson Westcott's "History of Philadelphia," as printed in the *Sunday Despatch*; John Hill Martin's "Bench and Bar"; Frank M. Etting's "History of Independence Hall," F. D. Stone's edition; Hon. James T. Mitchell's "Address Upon the District Court," and John William Wallace's "Address Upon the Inauguration of the New Hall of the Historical Society."

I have been materially aided by Mr. Andrew J. Reilly, Mr. Luther E. Hewitt, Mr. John W. Jordan, Mr. Julius F. Sachse and Mr. F. D. Stone.

for a conveyance to the county of a lot at the southeast corner of Sixth and Chestnut Streets, containing in front on Chestnut Street fifty feet, and in depth along Sixth Street seventy-three feet, on which should be erected within twenty years a building to be used "for the holding of courts" and as a "common hall." The project progressed slowly, and when it was finally carried forward to completion, two different funds were used for the purpose. The first of them had a curious origin. It was a time-honored custom among the early mayors of the city to celebrate their escape from the labors and responsibilities of their office by giving a public banquet, to which their constituents were generally invited. In 1741, James Hamilton, a son of Andrew Hamilton, and mayor at the time, considering it a custom more honored in the breach than in the observance, gave, in lieu of the entertainment, the sum of one hundred and fifty pounds, to be used in the erection of an exchange or other building for public purposes, and subsequent mayors followed his example. If our late mayor, when he vacated his office in March last, sent no prandial communication to you, these early qualms of conscience may explain the omission. The other fund was raised in 1785, by the sale of "the old gaol and work-house." On the 29th of March, 1787, fifteen feet were added to the depth of the lot by an Act of the Assembly; soon afterward work was commenced upon the cellar by gangs of convicts called "wheelbarrow-men,"<sup>1</sup> and the building was completed in the early part of 1789, just in time to insure its future fame and importance. On the 4th of March of that year, the Assembly, acting by authority of the representatives of the city and county of Philadelphia, tendered to Congress, for the temporary residence of the Federal Government, the use of the building "lately erected on the State House Square." In the year 1790, Congress, after a long and somewhat embittered struggle, finally determined to fix the location of the capital on the banks of the Potomac, and Philadelphia, mainly through

<sup>1</sup> "Historical Magazine," Vol. X, p. 105.





## CONGRESS HALL.



FROM COLUMBIAN MAGAZINE, JANUARY, 1790.

the efforts of Robert Morris, and much to the dissatisfaction of the people of New York, was selected as the seat of government for the intervening period of ten years. On the 6th of December, 1790, the first Congress at its third session, met in this building, the House of Representatives on the floor below us, and the Senate in this room.

In the *Columbian Magazine* for January, 1790, is a copper-plate representation of the building as it was when completed, taken from the southwest. This view shows five windows in each story of the west wall, two chimneys on the west, a cupola on the top, a brick wall enclosing the square on Sixth Street, and the rear of the building pretty much as it is at present. The text described it as "a large new building, finished in a neat and elegant style," and the square as "a beautiful lawn, interspersed with little knobs or tufts of flowering shrubs and clumps of trees well disposed. Through the middle of the gardens runs a spacious gravel walk, lined with double rows of thriving elms and communicating with serpentine walks which encompass the whole area. These surrounding walks are not uniformly on a level with the lawn, the margin of which being in some parts a little higher forms a bank which, in fine weather, affords pleasant seats."

From the books of foreign travellers and others we get a pretty good description of the internal arrangements and appearance of the building. Isaac Weld, an Englishman, says :

The room allotted to the representatives of the lower House is about sixty feet in length and fitted up in the plainest manner. At one end of it is a gallery, open to every person that chooses to enter it ; the staircase leading to which runs directly from the public street. The Senate chamber is in the story above this, and it is furnished and fitted up in a much superior style to that of the lower House.

The eagle with its thunderbolts, and the centrepiece of grapevine with thirteen stars, still seen in the ceiling, marred by the useless and unornamental glass knobs, scattered over

it only a few years ago, is a remnant of that "superior style" in which the Senate chamber was then fitted up. The gallery in the lower room had accommodations for three hundred persons. In this room stood a large pyramidal stove. A broad aisle ran through the centre.

We are told by a contemporary :

"The House of Representatives in session occupied the whole of the ground floor, upon a platform elevated three steps in ascent, plainly carpeted, and covering nearly the whole of the area, with a limited logea or promenade for the members and privileged persons, and four narrow desks between the Sixth Street windows for the stenographers, Lloyd, Gales, Callender and Duane. The Speaker's chair, without canopy, was of plain leather and brass nails, facing the east, at or near the centre of the western wall. The first Speaker of the House in this city was Frederick Augustus Muhlenberg, who, by his portly person and handsome rotundity, literally filled the chair. His rubicund complexion and oval face, hair full powdered, tanned satin vest of ample dimensions, darkblue coat with gilt buttons, and a sonorous voice, exercised by him without effort in putting the question, all corresponding in appearance and sound with his magnificent name, and accompanied as it was by that of George Washington, President, as signatures to the laws of the Union; all these had an imposing effect upon the inexperienced auditory in the gallery, to whom all was new and very strange. He was succeeded here by Jonathan Dayton, of New Jersey, a very tall, rawboned figure of a gentleman, with terrific aspect, and, when excited, a voice of thunder. His slender, bony figure filled only the centre of the chair, resting on the arms of it with his hands and not the elbows. From the silence which prevailed, of course, on coming to order after prayers by Bishop White an occasional whisper, increasing to a buzz, after the manner of boys in school, in the seats in the lobby and around the fires, swelling at last to loud conversation wholly inimical to debate. Very frequently at this stage of confusion among the babbling politicians, Mr. Speaker Dayton would start suddenly upon his feet, look fiercely around the hall, and utter the words, *Order, order, without the bar!* in such appalling tones of voice that as though a cannon had been fired under the windows in the street, the deepest silence in one moment prevailed, but for a very short time.

The voice of Muhlenberg seems to have impressed his contemporaries. In "He would be a Poet," a satire upon



**STATE HOUSE AT PHILADELPHIA, WITH CITY AND CONGRESS HALL, A.D. , 1796.**

(FROM JOURNAL OF HENRY WABSEY, F. A. S., SALISBURY, 1899 )

John Swanwick, published in Philadelphia in 1796, occur these lines :

I'll tell them all how great Augustus spoke ;  
With what an awful voice he called to order  
Whene'er the gallery did on tumult border.

In the "House of Wisdom in a Bustle," a satire published in 1798, we find the following :

The clock had just struck ; the doors were extended ;  
The Priest to his pulpit had gravely ascended.  
Devoutly he prayed, for devoutly he should  
Solicit for wicked as well as for good.  
He prayed for the Gentile, for Turk, and for Jew,  
And hoped they'd shun folly and wisdom pursue,  
For all absent members—as some have a notion  
To dispense with this formal and pious devotion.  
This duty performed without hesitation,  
He left to their wisdom the charge of the nation.  
When the parson retired, some members sat musing,  
Whilst others were letters and papers perusing.  
Some apples were munching ; some laughing and joking ;  
Some snuffing, some chewing, but none were a-smoking ;  
Some warming their faces.

This picture, indicating a lack of decorum in the House, is, perhaps, not overdrawn, since we are informed by another writer that a few of the members

"Persisted in wearing, while in their seats and during the debate, their ample cocked hats, placed fore and aft upon their heads, with here and there a leg thrown across the little desks before them."

A happy chance has preserved this further piece of contemporaneous color :

"At the easternmost part of Congress Hall is a bench, on which stands a pitcher of water to cool the throats of the thirsty members."<sup>1</sup>

Henry Wansey, an Englishman, who was here in 1794, says :

Behind it is a garden which is open for company to walk in. It was planned and laid out by Samuel Vaughan, Esq., a merchant of

<sup>1</sup> Note to "House of Wisdom in a Bustle."

London, who went a few years ago, and resided sometime in Philadelphia. It is particularly convenient to the House of Representatives, which, being on the ground floor, has two doors that open directly into it, to which they can retire to compose their thoughts or refresh themselves after any fatigue of business, or confer together and converse without interrupting the debate.

John Swanwick, himself a noted member of Congress from Philadelphia, as well as a poet of reputation at the time, in some verses "On a Walk in the State House Yard," June 30, 1787,<sup>1</sup> which he seems to have made with his Delia, "to see her smile and hear her gentle talk," describes it as a place where the young people of that day did their courting. He pays a warm tribute to the man who

planned this soft retreat  
And decked with trees and grassy sod the plain,  
in lines which predict

Oh! how much more shall he be crowned by fame  
Who formed for lovers this auspicious grove;

and while he does not forget that

Even now the sages whom the land convenes  
To fix her empire and prescribe her laws,  
While pensive wandering through these rural scenes,  
May frame their counsels for a world's applause,

he nevertheless thinks it more suited for enraptured swains who twine sportive garlands and reveal their wishes and fears.

Brissot de Warville came to Philadelphia in 1788. He was much impressed by our Quaker people, and was on terms of close and intimate friendship with many of them, including Miers Fisher, the noted lawyer. His head, filled with decided opinions concerning philanthropy and the rights of mankind, was cut off by the guillotine in the early days of the French Revolution. He describes what we call the square in this way:

"Behind the State House is a public garden. It is the only one which exists in Philadelphia. It is not large, but it is agreeable. One can breathe there. There are large squares of green divided by walks."

<sup>1</sup> "Swanwick's Poems," p. 94.





STATE HOUSE AND CONGRESS HALL.

FROM A PAINTING OF AN ELECTION, BY JOHN LOUIS KRIMMELL, ABOUT 1815.

Judge Mitchell, in his interesting address upon the District Court, delivered twenty years ago, says :

There was no entrance on Sixth Street, no partition between the present Quarter Sessions room and the room of the Highway Department, and no stairs at that point leading to the second story. The entrance was on Chestnut Street into a vestibule, thence into a sort of second vestibule or foyer for spectators, and then a large room, occupied during the time the Congress sat here after its completion by the House of Representatives. The staircase to the second story was in the vestibule next to Chestnut Street, and led up to a similar vestibule, from which ran a broad entry southward to the Senate Chamber, which was the present District Court room No. 1. The space now occupied by the District Court room No. 2, and the witness rooms, lately the Law Library, was divided into four committee rooms, two on each side of the broad entry I have mentioned. On the north side of the Senate Chamber was a gallery, attainable only by a steep spiral staircase leading up from what has since been the east or conversation room of the Law Library. This gallery was not a part of the original plan of the building, and was put there after the room was accepted by the Senate. It was very close to the ceiling, narrow, dark and uncomfortable. After the room came to be used by the courts the gallery was commonly kept closed, as I learn from Judge Coxe, because it became a place of resort for the hangers-on, who frequently went to sleep and snored, to the great disturbance of the proceedings. It was finally removed in 1835.

The late John McAllister used to tell that once, in his boyhood days, he and another urchin found their way into this gallery and sat down to watch the proceedings of the Senate. He and his friend were the only spectators. Presently, Thomas Jefferson arose and announced : " The Senate is about to go into executive session. The gentlemen in the gallery will please withdraw." Whereupon the two boys took their hats and departed, often afterwards saying, that at least they could claim to be gentlemen upon the authority of Jefferson. Those certainly were days of simplicity, when the only listeners that the debates of the Senate of the United States could attract were two errant urchins over whose heads time hung heavily.

The same contemporary authority we have before cited describes the Senate in this way :

In a very plain chair, without canopy, and a small mahogany table before him, festooned at the sides and front with green silk, Mr. Adams, the Vice-president, presided as president of the Senate, facing the north. Among the thirty Senators of that day there was observed constantly during the debate the most delightful silence, the most beautiful order, gravity and dignity of manner. They all appeared every morning full powdered and dressed as age or fancy might suggest in the richest material. The very atmosphere of the place seemed to inspire wisdom, mildness and condescension. Should any one of them so far forget for a moment as to be the cause of a protracted whisper while another was addressing the vice-president, three gentle taps with his silver pencil case upon the table by Mr. Adams immediately restored everything to repose and the most respectful attention.

If we were to suppose, however, that in that early period of the history of the republic the politicians and statesmen treated each other with gentle and kindly courtesy, awarded to their opponents due measure of credit, and fought out their controversies without heat and wrath, we should be very much mistaken. No unprejudiced person can carefully compare the records they have left to us with those of the present without perceiving that in the course of the century which has elapsed there has been a decided advance both in morals and in manners, and it strengthens our faith in the stability of the government to believe, as we properly may, that future generations will look back with as great pride and satisfaction upon the labors of the earnest and worthy men of to-day as do we upon those of the members of the earliest Congress, admirable as was much of their work and great as was their merit. William Maclay, United States Senator from Pennsylvania in the first Congress, kept a journal of the the proceedings of the Senate while he sat with them in this room. Upon one occasion General Dickinson came and whispered to him: "This day the treasury will make another purchase, for Hamilton (Alexander) has drawn fifteen thousand dollars from the bank in order to buy." Maclay complacently adds: "What a damnable villain!" At another time he gives expression to this devout wish: "Would to God this same General Washington were in Heaven."

CONGRESS HALL.

FROM BIRCH'S VIEWS, 1798.



Giles, the new member from Virginia, is preserved after this fashion :

The frothy manners of Virginia were ever uppermost. Canvas-back ducks, ham and chickens, old Maderia, the glories of the Ancient Dominion, all fine, were his constant themes. Boasted of personal prowess ; more manual exercise than any man in New England ; fast but fine living in his country, wine or cherry bounce from twelve o'clock to night every day. He seemed to practice on this principle, too, as often as the bottle passed him.

In 1798 two of the members of the House, both of them from New England, Matthew Lyon, of Vermont, and Roger Griswold, of Connecticut, had a series of rencontres, which caused much commotion and comment, and became the subject of squibs and caricatures, and of at least two satires in verse, "The Legislative Pugilists" and "The House of Wisdom in a Bustle." On the 22d of January, while the House was voting for members upon the committee to prosecute the impeachment of Senator Blount, some allusion was made by Griswold to a story that Lyon, during the Revolutionary War, had been compelled to wear a wooden sword because of cowardice in the field. Lyon made answer by spitting in his face. A motion was made to expel Griswold, a committee was appointed to investigate, the committee reported a resolution in favor of the expulsion of Lyon, and the House negatived the resolution. On the 15th of February, while Lyon was writing at his desk, Griswold came up and hit him over the head and shoulders with a club. Lyon managed to get hold of the tongs in use about the stove, and, defending himself, they beat each other until separated. Some time afterwards they met in an ante-room, and Lyon struck Griswold with a stick. Sitgreaves ran, and having found a hickory club, gave it to Griswold, but they were again separated. While the matter led to much discussion, no definite action was taken by the House.

Perhaps the most interesting event in the history of the building was the inauguration of Washington as President of the United States on the 4th of March, 1793. The oath

of office was administered to him by Judge Cushing in the room in which we are now sitting. Stansbury, in his "Recollections and Anecdotes of the Presidents of the United States," has given this description of the scene :

I was but a school boy at the time, and had followed one of the many groups of people who, from all quarters, were making their way to the hall in Chestnut Street at the corner of Sixth, where the two Houses of Congress then held their sittings, and where they were that day to be addressed by the President on the opening of his second term of office. Boys can often manage to work their way through a crowd better than men can. At all events, it so happened that I succeeded in reaching the steps of the hall, from which elevation, looking in every direction, I could see nothing but human heads—a vast, fluctuating sea, swaying to and fro, and filling every accessible place which commanded even a distant view of the building. They had congregated, not with the hope of getting into the hall, for that was physically impossible, but that they might see Washington. Many an anxious look was cast in the direction from which he was expected to come, till at length, true to the appointed hour (he was the most punctual of men) an agitation was observable on the outskirts of the crowd, which gradually opened and gave space for the approach of an elegant white coach, drawn by six superb white horses, having on its four sides beautiful designs of the four seasons, painted by Cipriani. It slowly made its way till it drew up immediately in front of the hall. The rush was now tremendous. But as the coach door opened there issued from it two gentlemen with long white wands, who, with some difficulty, parted the people so as to open a passage from the carriage to the steps on which the fortunate school boy had achieved a footing, and whence the whole proceeding could be distinctly seen. As the person of the President emerged from the carriage a universal shout rent the air, and continued as he deliberately ascended the steps. On reaching the platform he paused, looking back on the carriage, thus affording to the anxiety of the people the indulgence they desired of feasting their eyes upon his person. Never did a more majestic personage present himself to the public gaze. As the President entered all arose and remained standing until he had ascended the steps at the upper end of the chamber and taken his seat in the speaker's chair. It was an impressive moment. Notwithstanding that the spacious apartment, floor, lobby, galleries and all approaches were crowded to their utmost capacity, not a sound was heard. The silence of expectation was unbroken and profound. Every breath was suspended. He was dressed in a full suit of the richest black velvet; his lower limbs

GENERAL LAFAYETTE'S ARRIVAL AT INDEPENDENCE HALL, PHILADELPHIA, SEPT. 26TH, 1824.





in short clothes and diamond knee buckles and black silk stockings. His shoes, which were brightly japanned, were surmounted with large square silver buckles. His hair, carefully displayed in the manner of the day, was richly powdered and gathered behind into a black silk bag, on which was a bow of black ribbon. In his hand he carried a plain cocked hat, decorated with the American cockade. He wore by his side a light, slender dress sword, in a green shagreen scabbard, with a richly ornamented hilt. His gait was deliberate, his manner solemn but self-possessed, and he presented altogether the most august human figure I had then or have since beheld.

At the head of the Senate stood Thomas Jefferson in a blue coat—single breasted, with large, bright, basket buttons—his vest and small clothes of crimson. I remember being struck by his animated countenance of a brick-red hue, his bright eye and foxy hair, as well as by his tall, gaunt, ungainly form and square shoulders. A perfect contrast was presented by the pale reflective face and delicate figure of James Madison, and, above all, by the short, burly, bustling form of General Knox, with ruddy cheek, prominent eye, and still more prominent proportions of another kind. In the semi-circle which was formed behind the chair, and on either hand of the President, my boyish gaze was attracted by the splendid attire of the Chevalier D'Yrujo, the Spanish Ambassador, then the only foreign minister near our infant government. His glittering star, his silk *chapeau bras*, edged with ostrich feathers, his foreign air and courtly bearing contrasted strangely with those nobility of nature's forming who stood around him. It was a very fair representation of the old world and the new. Having retained his seat for a few moments, while the members resumed their seats, the President rose and, taking from his breast a roll of manuscript, proceeded to read his address. His voice was full and sonorous, deep and rich in its tones, free from that trumpet ring which it could assume amid the tumult of battle (and which is said to have been distinctly heard above its roar), but sufficiently loud and clear to fill the chamber and be heard with perfect ease in its most remote recesses. He read, as he did everything else, with a singular serenity and composure, with manly ease and dignity, but without the smallest attempt at display. Having concluded, he laid the manuscript upon the table before him, and resumed his seat, when, after a slight pause, he rose and withdrew, the members rising and remaining on their feet until he left the chamber.

This graphic and somewhat highly-wrought narrative is certainly entertaining and interesting, but there are some features about it which suggest the query as to whether or not it is entirely trustworthy.

The celebrated William Cobbett, one of the great masters of the English language and later a member of Parliament, was present upon all but five days of the session of 1795-6. "Most of the members will without doubt," he says, "recollect seeing a little dark man, clad in a gray coat something the worse for wear, sitting in the west corner of the front seat. That has been my post." On the 8th of December, 1795, Washington came before the Senate and House assembled in the hall of the House, to present his message concerning Jay's treaty with England. He found Congress in a state of "composed gravity" and "respectful silence" and the gallery "crowded with anxious spectators." Cobbett then proceeds:

The President is a timid speaker. He is a proof among thousands that superior genius, wisdom and courage are ever accompanied with excessive modesty. His situation was at this time almost entirely new. Never till a few months preceding this session had the tongue of the most factious slander dared to make a public attack on his character. This was the first time he had ever entered the walls of Congress without a full assurance of meeting a welcome from every heart. He now saw even among those to whom he addressed himself, numbers who to repay all his labors, all his anxious cares for their welfare, were ready to thwart his measures and present him the cup of humiliation filled to the brim. When he came to that part of his speech where he mentions the treaty with his Britannic majesty he cast his eyes toward the gallery. It was not the look of indignation and reproach, but of injured virtue which is ever ready to forgive. I was pleased to observe that not a single murmur of disapprobation was heard from the spectators that surrounded me; and if there were some amongst them who had assisted at the turbulent town meetings I am persuaded that they were sincerely penitent. When he departed every look seemed to say: God prolong his precious life.

- John Adams, the second President of the United States, was inaugurated here on the 4th of March, 1797. As Adams and Jefferson entered they were each applauded by their respective party followers. Adams took his seat in the chair of the speaker; Jefferson, Washington, and the secretary of the Senate were upon his left hand, and the Chief Justice and Associate Justices of the Supreme Court of the United

**STATE HOUSE AND CONGRESS HALL.**

**FROM BOWEN'S VIEWS OF PHILADELPHIA, 1838.**



States at a table in the centre. General James Wilkinson, Commander-in-chief of the army, all of the officers of State and foreign ministers were present. Adams made a short speech and then going down to the table at which the judges were sitting, took the oath of office administered to him by the Chief Justice, Oliver Ellsworth. After his withdrawal, Jefferson was sworn into office as Vice-President. John McKoy, who was present, wrote a description of the scene for Poulson's *Daily Advertiser*. He says :

The first novelty that presented itself was the entrance of the Spanish minister, the Marquis Yrujo, in full diplomatic costume. He was of middle size, of round person, florid complexion, and hair powdered like a snowball; dark striped silk coat, lined with satin; white waistcoat, black silk breeches, white silk stockings, shoes and buckles. He had by his side an elegant hilted small sword, and his chapeau, tipped with white feathers, under his arm. Thus decorated, he crossed the floor of the hall with the most easy nonchalance possible and an occasional side toss of the head (to him habitual) to his appointed place. He was viewed by the audience for a short time in curious silence. He had scarcely adjusted himself to his chair, when the attention of the audience was roused by the word "Washington," near the door of the entrance. The word flew like lightning through the assembly, and the subsequent varied shouts of enthusiasm produced immediately such a sound as

"When loud surges lash the sounding shore."

It was an unexpected and instantaneous expression of simultaneous feeling which made the hall tremble. Occasionally the word "Washington," "Washington," might be heard like the guns in a storm. He entered in the midst and crossed the floor at a quick step, as if eager to escape notice, and seated himself quickly on his chair, near the Marquis Yrujo, who rose up at his entrance as if startled by the uncommon scene. He was dressed similar to all the full length portraits of him—hair full powdered, with black silk rose and bag pendant behind as then was usual for elderly gentlemen of the old school. But on those portraits one who had never seen Washington might look in vain for that benign expression of countenance possessed by him and only sufficiently perceptible in the lithographic bust of Rembrandt Peale, to cause a feeling, as Judge Peters in his certificate to the painter expresses it. The burst at the entrance had not subsided, when the word "Jefferson," at the entrance door, again electrified the audience into another explosion

of feeling similar to the first, but abated in force and energy. He entered, dressed in a long, blue frock coat, single breasted, and buttoned down to the waist; light sandy hair, very slightly powdered and cued with black ribbon a long way down his back; tall, of benign aspect and straight as an arrow, he bent not, but with an erect gait moved leisurely to his seat near Washington and sat down. Silence again ensued. Presently an increased bustle near the door of the entrance, and the words "President," "President Adams," again produced an explosion of feeling similar to those that had preceded, but again diminished by repetition in its force and energy. He was dressed in a suit of light drab cloth, his hair well powdered, with rose and bag like those of Washington. He passed slowly on, bowing on each side, till he reached the speaker's chair, on which he sat down. Again a deep silence prevailed, in the midst of which he rose, and bowing round to the audience three times, varying his position each time, he then read his inaugural address, in the course of which he alluded to, and at the same time bowed to, his predecessor, which was returned from Washington, who, with the members of Congress, were all standing. When he had finished, he sat down. After a short pause he rose up, and bowing round as before, he descended from the chair and passed out with acclamation. Washington and Jefferson remained standing together, and the bulk of the audience watching their movements in cautious silence. Presently, with a graceful motion of the hand, Washington invited the Vice-President, Jefferson, to pass on before him, which was declined by Mr. Jefferson. After a pause, an invitation to proceed was repeated by Washington, when the Vice-President passed on towards the door and Washington after him.

Among the spectators of this interesting scene was Rembrandt Peale, the artist, who had a seat in the gallery. Mrs. Susan R. Echard, who in 1859 was still living in Philadelphia at the age of eighty-three years, and who was present, wrote a contemporary letter to a kinsman in which she said :

When General Washington delivered his Farewell Address, in the room at the southeast corner of Chestnut and Sixth Streets, I sat immediately in front of him. It was in the room Congress occupied. The table of the speaker was between the two windows on Sixth Street. The daughter of Dr. C. (Craik), of Alexandria, the physician and intimate friend of Washington, Mrs. H. (Harrison), whose husband was the auditor, was a very dear friend of mine. Her

**CONGRESS HALL.**

**FROM PHOTOGRAPH OF 1855**





brother Washington was one of the secretaries of General Washington. Young Dandridge, a nephew of Mrs. Washington, was the other. I was included in Mrs. H.'s party to witness the august, the solemn scene. Mr. H. declined going with Mrs. H., as she had determined to go early, so as to secure the front bench. It was fortunate for Miss C. (Custis), afterward Mrs. L. (Lewis), that she could not trust herself to be so near her honored grandfather. My dear father stood very near her. She was terribly agitated. There was a narrow passage from the door of entrance to the room, which was on the east, dividing the rows of benches. General Washington stopped at the end to let Mr. Adams pass to the chair. The latter always wore a full suit of bright drab, with lash or loose cuffs to his coat. He always wore wrist ruffles. He had not changed his fashions. He was a short man with a good head. With his family he attended our church twice a day. General Washington's dress was a full suit of black. His military hat had the black cockade. There stood the "Father of his Country," acknowledged by nations the first in war, the first in peace, and the first in the hearts of his countrymen. No marshals with gold-colored scarfs attended him; there was no cheering, no noise; the most profound silence greeted him, as if the great assembly desired to hear him breathe and catch his breath in homage of their hearts. Mr. Adams covered his face with both his hands; the sleeves of his coat and hands were covered with tears. Every now and then there was a suppressed sob. I cannot describe Washington's appearance as I felt it—perfectly composed and self-possessed till the close of his address—then, when strong nervous sobs broke loose, when tears covered the faces, then the great man was shaken. I never took my eyes from his face. Large drops came from his eyes. He looked to the youthful children who were parting with their father, their friend, as if his heart was with them, and would be to the end.<sup>1</sup>

While Congress held its sessions in this building, the United States Mint and the United States Bank were established; Vermont, Kentucky and Tennessee were admitted into the Union; the army and navy were organized upon a permanent basis; Jay's treaty, determining our relations with England, resulting in much difference of opinion, was considered and ratified; the whiskey insurrection was suppressed; the wars with the Indians, conducted successively by Harmer, St. Clair and Wayne—all of them Pennsylvanians

<sup>1</sup> G. W. P. Custis' "Recollections of Washington," p. 434.

--were fought, and, in the ably-managed campaign of Wayne, the power of the hostile tribes was finally broken, and the West won for civilization; and the brief war with France, reflecting much credit upon our youthful navy and upon Commodore Thomas Truxton, afterward Sheriff of Philadelphia County, was courageously undertaken and maintained. Here, too, was officially announced the death of Washington, when John Marshall offered a resolution "that a committee, in conjunction with one from the Senate, be appointed to consider on the most suitable manner of paying honor to the memory of the man first in war, first in peace, and first in the hearts of his countrymen," thus originating an expressive phrase destined in America never to be forgotten. Congress sat here for the last time on the fourteenth day of May, 1800. The last act of the Senate in this building was to request the President to instruct the Attorney-General to prosecute William Duane, editor of the *Aurora*, for a defamatory libel. Then, after the passage of a resolution extending its thanks to "the commissioners of the city and county of Philadelphia for the convenient and elegant accommodations furnished by them for the use of the Senate during the residence of the national government in the city," that august body adjourned to meet thereafter in the city of Washington, and the éclat incident to the location of the capital of the country departed from Philadelphia forever.

At a later period a committee of Congress recommended the appropriation of a sum of one hundred thousand dollars as compensation by the Government for the use of these buildings, but nothing came of the proposition, and this city has the satisfaction of knowing that among its many patriotic services is the fact that without return of any kind it furnished during ten years an abiding place to the homeless nation<sup>1</sup>.

The subsequent history of the building is less eventful,

<sup>1</sup>Broadhead's "Location of the National Capital," *Magazine of American History*, January, 1884.

and, though covering a period when it would seem that the facts ought to be accessible, is in reality much more obscure. A plan in a volume entitled "Philadelphia in 1824," shows that at that time the north room of the lower floor was occupied by the District Court, the south room by the Common Pleas, the north room of the upper floor by the Supreme Court of Pennsylvania, the south room by the Circuit Court of the United States, and that between these two rooms on the upper floor on the west was the Law Library, and on the east the Controllers of Public Schools. Definitely, when these courts began their sessions here, neither Judge Mitchell nor Thompson Westcott, who made a thorough search of the newspapers and most other sources of contemporary information, was able to ascertain. Some further light can now, however, be given. In the printed report of the trial, in 1809, of General Michael Bright, before Judges Bushrod Washington and Richard Peters, in the Circuit Court of the United States, an important case which involved a question of jurisdiction between the State of Pennsylvania and the United States Government, and whose events of a very war-like nature caused the house at the northwest corner of Seventh and Arch Streets to be known as Fort Rittenhouse, upon page 201, there appears an affidavit of Thomas Passmore, an auctioneer of the city. He deposed "that, on Sunday last, the 30th of April, ultimo, between five and six o'clock in the afternoon, as he was standing near the door of the County Court House, at the corner of Sixth and Chestnut Streets, he heard some voices calling from the balcony of the Court House, 'Corless, that's wrong.' Upon looking round this deponent saw Matthias Corless, who this deponent understood was one of the jurors in the case of the United States against Bright and others, passing from the said Court House across the street towards the Shakespeare Hotel, a tavern situate at the northwest corner at Sixth and Chestnut Streets." That court was therefore sitting here in 1809. The directory for 1809 says that the Orphans' Court then sat "on the third Friday of every month at the County Court

House." The jurisdiction of the Orphans' Court was at that time exercised by the judges of the Court of Common Pleas, who were also the judges of the Courts of Oyer and Terminer and of the Quarter Sessions. It is probable, therefore, that the United States Courts and the Common Pleas, with its accessories, commenced their sessions here soon after the building was surrendered by the Congress, and presumably the Common Pleas continued to hold its sessions in the building until the number of criminal cases became so great as to require continuous sessions of the criminal courts. The United States Courts remained until September 15, 1826. According to Westcott, the District Court began to hold its sessions here in 1818, and it continued to sit here until its final dissolution on the 4th of January, 1875. The following list of the judges of that court while in this building is taken from Martin's "Bench and Bar":

#### PRESIDENT JUDGES

JOSEPH HEMPHILL, May 6, 1811.  
JOSEPH BORDEN MCKEAN, October 1, 1818.  
JARED INGERSOLL, March 19, 1821.  
MOSES LEVY, December 18, 1822.  
JOSEPH BORDEN MCKEAN, March 21, 1825.  
JOSEPH BARNES, October 24, 1826.  
THOMAS MCKEAN PETTIT, April 22, 1835.  
JOEL JONES, April 8, 1845.  
GEORGE SHARSWOOD, February 1, 1848.  
JOHN INNES CLARK HARE, December 1, 1867.

#### ASSOCIATE JUDGES

ANTHONY SIMMONS, May 6, 1811.  
JACOB SUMMER, June 3, 1811.  
THOMAS SERGEANT, October 20, 1814.  
JOSEPH BORDEN MCKEAN, March 27, 1814.  
JOSEPH BARNES, October 1, 1818.  
JOSEPH BORDEN MCKEAN, March 17, 1821.  
BENJAMIN RAWLE MORGAN, March 29, 1821.  
JOHN HALLOWELL, March 27, 1825.  
CHARLES SIDNEY COXE, October 24, 1826.  
THOMAS MCKEAN PETTIT, February 16, 1833.  
GEORGE MCDOWELL STROUD, March 30, 1835.

JOEL JONES, April 22, 1835.  
 JOHN KING FINDLAY, February 5, 1848.  
 JOHN INNES CLARK HARE, December 1, 1851.  
 MARTIN RUSSELL THAYER, December 1, 1867.  
 THOMAS GREENBANK, December 7, 1868.  
 MARTIN RUSSELL THAYER, March 27, 1869.  
 JAMES LYND, December 5, 1870.  
 JAMES TYNDALE MITCHELL, December 4, 1871.  
 AMOS BRIGGS, March 25, 1872.

Upon the abolition of the District Court and the reorganization of the Courts of Common Pleas, the south room of the upper story C and the north room D were assigned to the Court of Common Pleas No. 2, and have been occupied by that court until to-day. The judges of No. 2 who have sat here have been :

#### PRESIDENT JUDGE

JOHN INNES CLARK HARE, January 4, 1875.

#### ASSOCIATE JUDGES

JAMES TYNDALE MITCHELL, January 4, 1875.  
 JOSEPH T. PRATT, January 4, 1875.  
 DAVID NEWLIN FELL, May 3, 1877.  
 SAMUEL WHITAKER PENNYPACKER, January 9, 1889.  
 THEODORE FINLEY JENKINS, January 1, 1894.  
 MAYER SULZBERGER, January 1, 1895.

Three of the judges have gone from this building to the Supreme Court of Pennsylvania—George Sharswood, James Tyndale Mitchell and David Newlin Fell—and perhaps no living American is more widely respected among men of the English-speaking races for his learning and attainments as a jurist than the president judge of this court. The south room of the lower floor was used by the Court of Oyer and Terminer until the erection of the brick building on Sixth Street below Chestnut, in 1867, as I am informed by Judge F. Carroll Brewster; and among the famous murder cases tried here were those of Richard Smith, Arthur Spring, Charles Langfeldt, and that most ferocious of Philadelphia murderers, Anton Probst. The Court of Quarter Sessions

continued to hold its sessions in that room until its removal to the City Hall, at Broad and Market Streets, July 31, 1891. From that time until the present, it has been used for jury trials by Judges Craig Biddle and François Amedée Bregy, of the Court of Common Pleas No. 1. For many years the Law Academy of Philadelphia held its moot court in room D.

The Law Association had its meetings and kept its library upon the upper floor from 1819 till 1872, and on October 28, 1841, made a circular announcement that "Gentlemen who wish to converse will be pleased to withdraw to the conversation room on the east side of the hall."

The north room of the first floor has been the office of the Prothonotary of the Courts of Common Pleas, Colonel William B. Mann, since January, 1879. Before that date it was occupied as the Tax Office, and at a still earlier time by the Highway Department.

The venerable building has not been without its vicissitudes. On the 26th of December, 1821, a fire, caused by a defective flue, burned the northern part of the roof and injured the cupola, but the activity of the firemen preserved it from destruction. During a conflagration at Hart's building in December, 1851, it caught fire several times and was in the greatest danger, but was again happily saved. At one time legislation was proposed and passed by one of the Houses at Harrisburg to tear down the State House and other buildings and sell the ground for what it would bring at auction. The Act of August 5, 1870, providing for the appointment of a building commission, directed that this hall should be removed, but, fortunately, that part of the Act has never been carried into effect, and was repealed at the last session of the Legislature. Nor has it been without a suggestion of tragedy. Upon the morning of December 11, 1866, Judge F. Carroll Brewster, though holding the Court of Common Pleas, sat temporarily in room D to hear an application for the appointment of a receiver in a case of *Vankirk vs. Page*. As he leaned forward to talk to an officer

an iron ventilator weighing seventy pounds fell from the ceiling and crushed the back and legs of his chair.<sup>1</sup>

On the 16th of February, 1893, the case of *Lukens vs. The City*, which had been on trial in room D for four days, was given to the jury shortly after 3 o'clock in the afternoon. As the Judge left the court room the plaintiff asked him whether he would not wait and take the verdict. After a momentary consideration, he declined, saying it could be sealed and brought into the court the next morning. A short time afterward, a mass of plaster and lath, eight inches in thickness and weighing hundreds of pounds, fell upon the bench and chair, crushing the bench to the floor, and so filling the room with debris that for some days the court was held in the lower story. The danger to the judges had no effect to deter a ribald wit of the Bar from suggesting, "*Fiat justitia, ruat ceiling.*"

The hour for departure has arrived. There is a French proverb which runs, that the man who wears silk stockings is careful about stepping into the mud. It has been the good fortune of the Court of Common Pleas No. 2 hitherto to conduct its proceedings amid surroundings and influences calculated to be helpful in aiding it to maintain a high standard of rectitude and professional effort. In this place those measures were taken which established the government of the United States upon a firm basis, and started it upon its wonderful career of development and prosperity. Here for the greater part of a century the rights of personal liberty of the citizens of Philadelphia were decided, and their rights of property, since the judgments of the District Court were for the most part final, were determined. The tread of Washington and Adams and Jefferson had scarcely ceased to resound amid these walls, before they began to hearken to the learning of McKean and Sharswood and Hare. The eloquence of Stockton and Morris, of Marshall and Boudinot, strenuous and urgent about matters of state and finance, died away into the past only to give place to the

<sup>1</sup> *The Press*, December 12, 1866.



eloquence of Binney, and Meredith, and McCall, and Cuyler,<sup>1</sup> and Brewster, and Sheppard, striving for the solution of abstruse and intricate legal problems, and that of Reed, and Brown, and Mann, and Cassidy, contending over questions of life and death. And it is to be hoped that the end is not yet. We depart with an assured faith that the people of this efficient and forceful community, possessing as they do the sacred fanes of America, and mindful as they are of the importance and value of such possession, will see to it that this building is retained unchanged for the future generations of citizens, and that its hallowed memories are carefully preserved and proudly cherished.

<sup>1</sup> An eminent Philadelphia lawyer says of Mr. Cuyler that he possessed the highest qualifications of an advocate, and that "he could persuade a jury to find a verdict against the evidence, and the Supreme Court to render a decision contrary to the law."

**FINANCES OF PENNSYLVANIA, 1838-1843**

[Report of a Joint Committee of the Senate and House of Representatives of Pennsylvania upon the Conduct of the Financial Affairs of the Commonwealth, from 1838 to 1843. Read in the House May 15, and Senate May 16, 1878, and ordered to be printed.]

*To the Honorable, the Senate and House of Representatives of the Commonwealth of Pennsylvania.*

During the month of February, A. D. 1878, the General Assembly passed the following preamble and resolution :

HOUSE OF REPRESENTATIVES,  
February, 8, 1878.

WHEREAS, Editions of the works of popular authors are frequently reprinted in foreign countries, as well as in our own, in which it is asserted, that in the crisis of the credit of Pennsylvania, about the years 1839-43, repudiation of the obligations of this Commonwealth was declared in acts of the Legislature ; that a refusal to pay principal or interest of her obligations took place in obedience to these enactments on the part of her State authorities ; and asserting other erroneous charges :

*And Whereas*, This false representation of what then occurred fills a place in much of the current history of that period, misrepresenting the action of the State during a temporary derangement of her financial affairs ; therefore,

*Resolved* (if the Senate concur), That a special committee of two members of the Senate and three members of the House of Representatives be appointed, whose duty it shall be to prepare a report of the legislative acts of that period, with a brief history of the conduct of the State officers under such acts, if any exist, to the end that the works of popular authors may no longer be quoted to asperse the good name of Pennsylvania.

In compliance with the foregoing instructions, the undersigned, the committee appointed by the Senate and House of Representatives, respectfully report as follows :<sup>1</sup>

In order to properly understand the subject of the inquiry submitted to us, it is scarcely necessary to enter into a minute

<sup>1</sup> The committee here desire to express their sincere thanks to Messrs. A. Boyd Hamilton, John B. Linn and W. H. Egle, Esquires, for many valuable statistics, and also for much material aid in the preparation of this report.

historical detail of the financial affairs of the Commonwealth. It is, however, proper to state that previous to the time when it was falsely charged that Pennsylvania had sunk into the disgraceful and dishonest practice of repudiation, her obligations had been met with unusual promptness, as we shall proceed to demonstrate by a rapid recapitulation of our financial history.

Prior to the War of the Revolution, the subject of "internal improvements" had been agitated in our State, but it was not, however, until after the restoration of peace that these projects began to take real, substantial form.

Of the successive measures adopted tending to improve the means of interior traffic and development of the regions most contiguous to the center of our population, and to securing open avenues of trade to our eastern metropolis, then one of the most considerable of all the cities of the Union, we cannot stop to refer. To accomplish an object so ambitious, a grand system of public works was inaugurated. Its prosecution caused a larger public debt, and the revenues of the State were not sufficient to pay a tithe of the tremendous outlay.

In the year 1825, when we entered on this system of internal improvements, the entire debt of the Commonwealth was \$1,840,000. In 1833, this debt had grown nearly twenty times in amount, or to the sum of \$25,000,000. During a part of this period, a law imposing a State tax on real and personal property was in active existence, which yielded comparatively small revenues. In 1830, the first temporary loan was required to meet accruing interest on the debt, then rapidly increasing, and this makeshift became, for a number of years, a part of State policy and practice.

In 1835, as appears by the report of the State Treasurer, there was a deficit of \$60,000, notwithstanding the receipt of nearly \$3,000,000 of the surplus revenues of the United States.

In 1837-8, we find it was estimated that at the close of the fiscal year 1839 the supposed deficit would amount to \$3,872,254. This was provided for by additional loans. It was not until 1840 that vigorous measures were taken by the

General Assembly to prevent further increase of the public obligations, by the passage of the tax law of that year.

This was the first halt in a career of heedless appropriations, without means to meet them. The provisions of the law of 1840 had been repeatedly pressed by all the Governors and successive State Treasurers upon the attention of the Legislature as the only alternative for financial relief, but such was the opposition to further imposition of taxes, in those portions of the Commonwealth not directly benefited by the "public works," that this important question remained undetermined so long that there was imminent danger of financial wreck. This, however, was happily averted. In 1841 the first loans of the funded debt became due, with the interest on \$36,000,000 added.

A "permanent" loan was then authorized and negotiated. It was during this period that the subject of repudiation was hinted at by some ultra politicians, who, perchance thought, by this means, to ride into power. As for the people of the State *en masse* this was never thought of, much less broached; while everywhere, throughout the length and breadth of the State her faith and credit were the subjects uppermost in the minds of its citizens. The failure to re-imburse or rather redeem the loans which first became due caused deep regret; but feeling confident that the resources of this Commonwealth were ample to satisfy all claims, the General Assembly only re-echoed the voice of the people when, in January, 1842, it unanimously passed the following joint resolutions:<sup>1</sup>

*Resolved*, That the State stock issued by virtue of the laws of this Commonwealth is constitutionally correct, and that the citizens of the State are legally and morally bound to pay and redeem the same.

*Resolved*, That the faith and credit of the State does remain as heretofore unbroken, and that the property of the citizens is legitimately the subject of taxation for the full and entire payment of all the just demands on the treasury thereof.

*Resolved*, That the doctrine of repudiation of the liabilities of

<sup>1</sup> Journal H. of R., 1842, vol. 1, pages 14 and 56

the Commonwealth is obnoxious in its tendencies, and calculated to be destructive of the principles on which the government is based, and that every good citizen is bound, by all moral as well as legal considerations, to cheerfully contribute his share towards the liquidation of the State debt.

By reference to the books of the State Treasurer, it will be seen that the foreign creditors were paid promptly, not always in coin, but in its value.

The trouble, or rather the dissatisfaction, came from the domestic creditors, who declined to receive certificates of indebtedness in lieu of immediate cash. The clamor thus created by this class of creditors was the sole cause of the oft-repeated, but never proven charge, against the Commonwealth, of repudiation of her obligations.

Pennsylvania, in her extremest financial distress, did not repudiate, made no proposition or laws in that direction, but all her public officers urged and asserted in every official utterance the preservation of the public faith.

Eventually, her pledges were redeemed dollar for dollar, either in certificates, relief notes, or in transactions of the State with her banks. If the payment of interest was suspended for a brief period, no individual suffering could have been severe. The State paid all her certificates with the interest added, not always in coin, it is true, but always in the money issued under the authority of her own laws.

The whole loss to the State, on over \$30,000,000 of loans, from 1834 to 1845, was less than \$300,000 in exchange or interest certificates. In such a condition of affairs no one could have been greatly injured, even if the State was not as punctual as perhaps she would have been under a somewhat different condition of public policy.

The Legislature was careless and suffered the treasury to pay accruing interest from current loans, perversely inattentive to the protestations of the Executive and Treasury departments. Up to the moment of threatened default no system of taxation had been decided upon, and the result of such management was confusion and imminent loss of a good name.

Amid all this financial disaster, as heretofore remarked, the *foreign holders of loans had their interest promptly paid ; and at no time was any loan of this Commonwealth disposed of at less than par.*

We may here state that an attempt was made at one period to call in part of the floating indebtedness, and a considerable sum was funded at four and one-half and five per centum. To-day, the issues, of loans, created thirty years ago, are worth more than their face value at any rate of interest, and are eagerly sought after by investors.

To prepare the machinery necessary to bring about restored credit was a work of several years, and it was not until 1844 that the State Treasury was made easy by a balance, but at no period since that day, even in the darkest hours of the late Civil War, when coin was at its highest value, has that department been without means to discharge every obligation—while at present it is able to purchase its public loans more rapidly than the holders are prepared to dispose of them.

Your committee are fully convinced that the charges so often made against the good name of Pennsylvania in regard to the non-payment of her obligations have no real foundation in fact—but as has been remarked by an able writer who has examined the subject very critically—she has “on the contrary acted with a sense of integrity.” They herewith submit numerous extracts from executive and legislative documents which they wish to be regarded as part of their report to prove the truth of the statements which they have made.

All of which is respectfully submitted.

HORATIO GATES JONES,  
D. M. CRAWFORD,  
*Committee on the part of the Senate.*

WILLIAM P. SCHELL,  
W. M. RAPSHER,  
ALFRED HAYES,

*Committee on the part of the House of Representatives.*

MAY 1, 1878.

**APPENDIX TO REPORT OF THE JOINT COMMITTEE  
OF THE LEGISLATURE**

The following extracts from current State papers exhibit the efforts made by the officers of the State to inform the General Assembly of the consequences of its financial legislation, and explain many phases of the course of financial events from 1834 until the period that the embarrassments of the State were substantially overcome :

**TAX LAWS SUFFERED TO EXPIRE BY THEIR OWN LIMITATION—MEANS FOR THE FUTURE PROVIDED IN UNITED STATES BANK CHARTER LAW**

“ Having found the Commonwealth involved in pecuniary embarrassment at the time the administration of its affairs was committed to my care, which left me no alternative other than an appeal to taxation, which is always odious to the people, or an immediate abandonment of a great and most important public enterprise in which the State had engaged, upon which she had already expended a large amount of money, and had contracted for the expenditure of many millions more, and having met the emergency and taken the course to which my duty to the State, its interests and its character pointed, but which place me in an unenviable situation of being the first chief magistrate to recommend a State tax for any purpose, I rejoice that the affairs of the Commonwealth have been brought to an issue so prosperous during the continuance of my administration as to enable me to be the first, also, to announce to the representatives of the people and to our common constituents the cheering intelligence, which will not be more grateful to them than it is to myself, that further taxation for State purposes will not be required, and that the several Acts of the 25th of March, 1831, for assessing a tax on personal property, and for increasing the county rates and levies for the use of the Commonwealth may, without injury to the public interests, be permitted to expire by their own respective limitations.”—*Extract from Governor Ritner's message, December 2, 1835, House Journal, Vol. 2, page 13, 1835-36.*

## EXPLAINING THE RESOURCES OF THE COMMONWEALTH

“The balance which will be in the treasury at the close of the present financial year is not the only means applicable to the reduction of the State debt. By the sixth section of the United States Bank charter Act it is provided, ‘that the said corporation shall also, when required by law, advance on permanent loan, any sum or sums, not exceeding in the whole six millions of dollars, and for each sum of money so loaned shall receive from the Commonwealth a negotiable certificate of stock, re-imbursable on the third day of March, one thousand eight hundred and sixty-eight, transferable at the Bank of Pennsylvania, or such other place as the Legislature may hereafter designate, bearing an interest of either four or five per cent. per annum, payable half yearly, at the Bank of Pennsylvania, or such other place as the Legislature may hereafter designate, as the law requiring such loan may determine; and in case the interest shall be five per cent. shall pay to the Commonwealth one hundred and ten dollars in money for each hundred dollars in stock.’

“This provision having, with the rest of the Act, been accepted by the stockholders, is binding on the bank, and the benefit of it to the State is a part of the price agreed to be paid for the privileges granted.” \* \* \*—*Extract from Governor Ritner’s message, December 8, 1836, House Journal, Vol. 2, page 39, 1836–37.*

## HOW PUBLIC IMPROVEMENTS PAID FOR

“The public improvements have been constructed by money obtained on loan, and the repairs have, *until* the present year, been made from the same source; the tolls being pledged for the payment of interest.”—*Extract from State Treasurer Lawrence’s report, House Journal, Vol. 2, page 68, 1836–37.*



ACTION OF THE GOVERNOR IN REFERENCE TO A REDUCTION  
OF THE ESTIMATES FOR THE PUBLIC IMPROVEMENTS

“It will be perceived that in allotting the appropriations, the estimates of the canal commissioners have not been throughout adhered to. If the state of the treasury would permit it, I should not undertake to differ from the proper public agents on a matter committed to their charge. But taking into view the whole wants of the State in connection with the present condition of the treasury, I find it impossible fully to concur in their recommendations without a permanent increase of the public debt. I have, therefore, been compelled to reduce the various estimates.

“I know that they are generally less than have been expected by those connected with the different works, and the only reason which can or need be assigned, is the *inability* of the treasury to afford more. If the Legislature should, however, think proper to increase the appropriations to the Erie and North Branch canals, and the Gettysburg railroad, and to the turnpikes, by authorizing a temporary loan from the bank of the United States, under its charter, at four per cent., to meet the difference when the funds in the treasury shall be exhausted, I shall have no hesitation to concur.

“Perhaps, under all the circumstances of the case, this measure may be right in another point of view. It may be that our reasonable calculations on a restoration of the usual prosperity of the country will be again disappointed, and that the receipts into the treasury will not be sufficient to meet the appropriations recommended. Authority to negotiate a temporary loan of a limited amount to guard against this contingency might much promote the public interest, and can do no evil. I have no doubt but that the amount of such loan will be repaid out of the ordinary resources of the following year. The good effect of the temporary loan, which saved the character of the State during last summer, will prove the wisdom of the measure.”—*Extract from the message of Governor Ritner, December 6, 1837, House Journal, Vol. 2, pages 24 and 25, 1837-38.*

THE FAITH AND CREDIT OF THE COMMONWEALTH TO BE  
PARAMOUNT

“The State Treasurer conceives it to be his duty to inform the Legislature, inasmuch as many of the important items of revenue are, in their nature, subject to fluctuation, and exposed to the effect of untoward events not within the range of calculation, it, therefore, would be proper to vest sufficient authority somewhere, to provide temporary means to meet any deficiency, should such occur.

“The faith and credit of the Commonwealth should be held paramount to all other interests, and we should carefully guard against the possibility of its breach.

“For several years the revenue of the State has appeared, by the reports of the financial officers, to be in a flourishing condition, and was in reality so for the time being, but was certainly not of that permanent character on which the statesman could rely with confidence. If any one will take the trouble to examine the reports on finances for some years back, he will find that the ordinary revenue did not meet the ordinary and extraordinary expenditures.”—*Extract from State Treasurer Sturgeon's report, House Journal, Vol. 2, page 50, 1837-38.*

## THE DEFICIT IN THE TREASURY

“The above balances of the appropriations, per Act of the 14th of April, 1838, unpaid, together with the various local appropriations, under the head of colleges and academies, common schools, penitentiaries, and miscellaneous objects, after applying all the available means of the Treasury for the succeeding year to their liquidation, will leave a balance due and unpaid, on the 31st of October, 1839, amounting to \$2,791,254.39. But even the above deficit does not meet all the liabilities of the Commonwealth. There is no amount in the estimate of the State Treasurer for the ordinary repairs, which will not be less than \$350,000 or \$400,000; this will increase the deficit to \$3,151,254.39.

There is another item which may or may not be chargeable to the Commonwealth, the amount of which is unknown, and its character undefined ; I allude to the repairs on the Frankstown branch ; of this I will say more hereafter.<sup>1</sup> Thus the Legislature will have to provide funds to meet prior deficiencies, and including the sum necessary for repairs the succeeding year, \$3,151,254.39, before making an appropriation to our internal improvements, or to objects of any other character.

“In making up the State debt, I have charged the State with all moneys for which she is liable and is bound to pay. This sum is real, and must be paid when demanded.” \* \* \*

“You will perceive by referring to the receipts of the fiscal year, ending 31st of October, 1838, that there was paid into the treasury \$2,769,087.29, including the sum of \$775,000 borrowed on temporary loans, and including also \$264,722.39 received on bank bonuses and interest on surplus revenue. If from the first sum you deduct the two last items, being extraordinary revenue, you have the amount of receipts of revenue of an ordinary and permanent character, \$1,729,363.90.

“Permit me to refer you to the estimated receipts for the year ending 31st October, 1839, amounting to \$2,124,100, to which add the balance in the treasury on the 31st October, 1838, \$99,359.30, making together \$2,223,459.30. The expenditures for the same period will amount to \$5,014,713.69, which will leave a deficit of \$2,791,254.39, without including the amount necessary for ordinary repairs. In the receipts of the present fiscal year I have not added the fourth installment of the surplus revenue payable to the several States on the 1st of January, 1839, as the strong probability is it will not be received. For further information on this subject, I refer you to the annexed letter from the Secretary of the Treasury of the United States.

“In this, as well as in my former report, I have under-

<sup>1</sup> The deficit on the Frankstown branch was nearly \$700,000. The real deficit 3,872,254.

taken to show that the ordinary expenditures exceed the ordinary revenue, and that the deficit was met by incidental revenue, which was neither permanent in its character nor of such a nature that it could be safely relied on to meet demands that were yearly increasing. This incidental revenue, including the bonus received on chartering the United States Bank by the State, the several bonuses received for the re charter of other banks, and the surplus revenue received from the United States, has all been received and expended; and hereafter the treasury will have to depend on its ordinary resources to meet its expenditures."—*Extract from State Treasurer's report, House Journal, Vol. 2, pages 5, 6, 7, 1838-39.*

#### PROFUSENESS OF APPROPRIATIONS

"The appropriations of last session were made with great profusion. They exceeded, by nearly one million of dollars, the amount which a prudent foresight seemed to me to justify. At the commencement of the session, a full exposé of the means of the State, and the most pressing claims upon the treasury was exhibited. During the course of the session an adherence to moderation in expenditure was attempted, to be enforced by every means within the power of the Executive, on every proper occasion, but without success. And, finally, the unpleasant alternative was presented, as had been foreseen, of sanctioning appropriations of which, in the existing condition of the public finances, he could not approve, or of wholly obstructing the use of the completed works, by defeating a bill containing the indispensable provision for repairs. Under these circumstances, that bill was sanctioned, but no act of my public life was ever performed with greater reluctance."—*Extract from Governor Ritner's Message, December 27, 1838, House Journal, Vol. 2, page 46, 1838-39.*

"By these loans, the only control over which allowed to the Executive was that of keeping down the rate of interest, the State Treasury, in spite of calculations and estimates to the contrary, has continued, and still does continue to dis-

charge all the claims against the Commonwealth.”—*Extract from Governor Ritner’s Message, December 27, 1838, House Journal, Vol. 2, page 47, 1838–39.*

#### EXTENT OF THE STATE INDEBTEDNESS AND ITS FINANCIAL EMBARRASMENTS

On a recapitulation of the foregoing statements, it appears from them that the public debt amounts to the sum of . . . . .		\$34,141,663 80
The public property to . . . . .		33,259,085 28
Balance . . . . .		<hr/> \$882,578 52
The ordinary expenditures of the Commonwealth for all purposes for the last year, are		2,708,863 47
The ordinary revenues from all sources for the same year, amounts to . . . . .		1,621,119 84
Leaving a gross balance against the State of		<hr/> \$1,087,743 63

“The affairs of the Commonwealth have been for several years gradually verging on towards deeper and deeper embarrassment, until we have, at length, reached this unexpected deficiency of funds in the treasury to meet the demands upon it. The people have been told, again and again, that our fiscal condition was flourishing and prosperous, while, in fact, our prosperity was all based on paper calculations and loans, which loans, we are just now beginning to perceive, bear interest, and are some day to be paid. We are now compelled to forego all temporary expedients and look the true state of things in the face. We must resort to taxes, the sale of public improvements, or to further loans. The public improvements cannot be sold but at a most ruinous sacrifice; and as to loans, it is doubtful whether we can procure them at all, unless at an unwarranted rate of interest. Notwithstanding all these difficulties, the sum due by the State must be paid. To obtain the means, we have at best a choice of evils, and we ought to select that which will impose on the people of the Commonwealth least inconvenience and detriment.”

\* \* \* \* \*

“ Until within the last year we have been able not only to borrow money without difficulty, on State stock in Europe, but to pay the interest arising on former loans by new ones. We felt little of the inconveniences of this bloated system of credits, and seldom reflected that a day of reckoning would come when we could thus pay our debts no longer. States, banks, corporations and individuals all moved forward in harmonious unison, borrowing all they could and whenever they could, without reference to their future ability and means of repayment. The delusion is at last over. State stocks are now an unsalable drug in foreign markets, and we are called upon for the interest on our permanent loans, and have no means of paying it, unless we export specie, rely on the remote avails of our agricultural productions, or dispose of more State stock at a ruinous sacrifice, if, indeed, we can dispose of it at all. The time for sober reflection has arrived, the different States must now determine whether they will or not persist in a course of policy which has thus far been productive of such serious evils. Shall the States of this Union plunge deeper into debt and embarrassment, or shall they make economy and prudence their motto, resolved to extricate themselves as soon as possible, and be free? This is the question, and I trust Pennsylvania is ready to take her stand with those who follow the dictates of prudence and economy.”—*Extract from the Message of Governor Porter, January 8, 1840, House Journal, Vol. 2, pages 13-19, 20, 1840.*

REPORT UPON THE PAYMENT OF INTEREST TO FOREIGN  
CREDITORS

“*To His Excellency, David R. Porter :*

“ SIR: By a resolution of the General Assembly of 2d July, 1839, the Secretary of the Commonwealth, the Auditor General and the State Treasurer are constituted commissioners on behalf of the State to inquire whether the interest contracted to be paid by the Commonwealth on its public

loans, and which fell due and was payable in August, 1837, in February, 1838, and in August, 1838, was paid in legal money of the Commonwealth, according to the terms of such loans, and if they ascertain that the same was not so paid, but was paid in promissory notes or credits, or other currency whatever, of less value than money, then to ascertain and determine what was the current difference between the market value of such notes, credits or currency, and the lawful money in which of right such interest ought to have been paid, and to certify the same to the Governor.

“By a proviso of the same resolution, the commissioners, before proceeding to make the inquiries directed, are required to give at least ten days’ notice to the Bank of Pennsylvania, and to admit the bank to present evidence before them in relation thereto.

“In pursuance of this resolution, the Secretary of the Commonwealth and State Treasurer proceeded to Philadelphia in August, having first given the notice required by the resolution to the Bank of Pennsylvania, the Auditor General being absent from the seat of government upon public business at the time.

“In the performance of the duty required of the commissioners, the Bank of Pennsylvania, as well as other institutions and individuals to whom application was made for information upon the subject of inquiry, furnished promptly all the facts required.

“The requirements of the resolution are:

“1. To inquire whether the interest contracted to be paid by the Commonwealth on its public loans, and which fell due in August, 1837, and February and August, 1838, was paid in legal money of the Commonwealth.

“2. If it was not so paid, but was paid in promissory notes or credits, or other currency of less value than money, then to ascertain and determine the current difference between the market value of such notes or currency and the lawful money in which the interest ought to have been paid.

“3. To certify the result of their inquiries to the Governor.

“In answer to the first inquiry, it appears from the statement of the Bank of Pennsylvania where the interest was paid that it was not paid in specie, but in bank notes and bank credits, the funds for which were received from the State treasury in checks on various banks not paying specie.

“In answer to the second inquiry, it appears from the statement of the Bank of Pennsylvania, from a letter from the president of the Bank of the United States, and from other sources, that the difference at Philadelphia between specie and the market value of the currency in which the said interest was paid was, on the 1st of August, 1837, about 9 per cent. On the 1st of February, 1838, about 5 per cent. On the 1st of August, 1838, about 1 per cent.

“The whole amount of interest due and payable upon the public loans of the State was, on each of the above days, \$605,250.08. Of this interest there was due to

#### FOREIGN STOCKHOLDERS

On 1st of August, 1837 . . . . .	\$401,656 55
On 1st of February, 1838 . . . . .	399,052 57
On 1st of August, 1838 . . . . .	395,364 99

#### DOMESTIC STOCKHOLDERS

On 1st of August, 1837 . . . . .	\$203,593 53
On 1st of February, 1838 . . . . .	206,197 51
On 1st of August, 1838 . . . . .	209,855 09

#### TO BANKS WITHIN COMMONWEALTH

On 1st of August, 1837 . . . . .	\$14,125 00
On 1st of February, 1838 . . . . .	13,125 00
On 1st of August, 1838 . . . . .	19,664 89

“The cashier of the Bank of Pennsylvania stated to the commissioners that he was the agent for foreign stockholders, and received interest upon their loans as follows :

On the 1st of August, 1837 . . . . .	\$215,829 11
On the 1st of February, 1838 . . . . .	228,197 77
On the 1st of August, 1838 . . . . .	230,698 95



“That of this interest due as above stated, on the first of August, 1837, the sum of \$7,083.97 was invested in certificates of State stock, and the balance, \$208,745.12, was remitted, December 14, 1837, with an allowance by the bank of four months' interest at four per cent. and twelve and a half per cent. premium paid for the bills of exchange purchased.

The par of exchange upon London is considered about  $9\frac{1}{2}$  per cent. premium. That of the interest due on the 1st of February, 1838, the sum of \$10,364.80 was invested in certificates of State stock, and the balance, \$217,832.97, was remitted February 7, at a premium of 11 per cent. for the sterling bills bought. That of the interest due on the 1st of August, 1838, the sum of \$8,064.03 was invested in certificates of State stock, and the balance of \$222,634.92, was remitted August 3, 1838, at a premium of 9 per cent. for the sterling bills bought.

“From this statement, it appears that the foreign loanholders, for whom the cashier of the Bank of Pennsylvania is agent, did not receive their interest which fell due on the 1st day of August, 1837, when specie was worth 9 per cent. more than the notes of the bank, but did receive the amount in December, 1837, with four months' interest, at 4 per cent., in a sterling bill of exchange, for which they paid a premium of  $12\frac{1}{2}$  per cent., or 3 per cent. above par.

“And that for the sterling bills of exchange, to pay the interest which fell due on the 1st of February, 1838, when specie was 5 per cent. more valuable than the notes of the bank, the same loanholders paid a premium of 11 per cent., or  $1\frac{1}{2}$  per cent. above par, and that the sterling bills of exchange, to pay the interest which fell due on the 1st of August, 1838, were purchased at  $\frac{1}{2}$  per cent. below par, when the notes of the bank were 1 per cent. below the value of specie.

“Thus, more than one-half of the amount of interest due to foreign stockholders was paid in sterling bills of exchange, purchased at a much lower premium than the pre-

mium on specie ; and if the difference between the currency and the bills of exchange, in which the interest was paid by this agent, were adopted as the rule, it would amount,

On the 1st of August, 1837, to . . . . .	\$17,733 75
On the 1st of February, 1838, to . . . . .	8,881 87
Whole amount . . . . .	<u>\$26,615 62</u>

“ Other principal agents of foreign stockholders paid for sterling bills of exchange, in August, 1837, 20 per cent. premium, or  $10\frac{1}{2}$  per cent. above par ; in February, 1838, they paid for sterling bills 11 per cent. premium, or  $1\frac{1}{2}$  per cent. above par ; and in August, 1838, they purchased sterling bills at par. If the difference between the currency and the bills of exchange, in which the interest was paid by those agents, were adopted as the rule, it would amount,

On the 1st of August, 1837, to . . . . .	\$62,068 13
On the 1st of February, 1838, to . . . . .	8,881 87
On the 1st of August, 1838: No difference.	

Whole amount of difference . . . . .	<u>\$70,950 00</u>
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“ The commissioners have deemed it proper to state these facts, which would have been important had they been authorized to ascertain the actual loss sustained by the loanholders ; but the resolution of the Legislature does not direct them to ascertain the actual loss, or the difference between the currency, in which the interest was paid, and bills of exchange, but the ‘ *current difference between the market value of the notes, credits, or currency, and the lawful money in which, of right, such interest ought to have been paid.*’

“ In compliance with the provisions of the resolution, the commissioners do certify :

“ That the difference between specie, or lawful money, and the currency in which the interest due upon public loans of this State was paid (excluding, as directed by the resolution, the amount due to banks within this Commonwealth

which did not redeem their notes in lawful money at the times when the interest fell due,) was,

On the 1st of August, 1837 . . . . .	\$53,201 25
On the 1st of February, 1838 . . . . .	29,606 25
On the 1st of August, 1838 . . . . .	5,855 19

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Whole amount of difference, . . . . . \$88,662 69

“FRS. R. SHUNK,

“DANIEL STURGEON,

“Commissioners.

“HARRISBURG, *December 13, 1839.*”

(See message of Governor Porter, House Journal, Vol. II, pages 45, 46, 47 and 48, 1840.)

The following resolution was passed in the Senate, April 17, 1840 :

*Resolved*, That the Secretary of the Commonwealth be directed to obtain an account of the assessed value of the real and personal property within the Commonwealth, at the several triennial assessments made in the various counties within the last sixteen years, and furnish the information to the Senate.

From imperfect returns received, the following conclusions were arrived at by Francis R. Shunk, Secretary of the Commonwealth :

“First. That there is no uniform rule which governs all the counties in fixing the value of property at the assessments.

“Second. That in not a few counties different rules govern at different assessments.”—*Extract from report of the Secretary of the Commonwealth to the Senate, May 26, 1840, Senate Journal, Vol. II, pages 703 and 704, 1840.*

THE MODE OF MAKING PAYMENTS AT THE TREASURY—  
THE EFFECT OF NEW TAX LAWS

“It is proper here to remark that it has not been the uniform practice of the Legislature to provide sufficient revenue to meet the current demands upon the State treasury. The various appropriations of the public treasure have exceeded the public income. Out of this state of things a custom has grown up at the treasury, it seems, to pay the demands upon it, as they are from time presented, without reference to the specific appropriation of part of the moneys therein to the payment of the interest upon the public debt, which falls due semi-annually on the 1st of February, and 1st of August. \* \* \*

“It is computed that the tax which will be rendered available under the act of the 11th of June, 1840, entitled ‘An Act to create additional revenue, to be applied towards the payment of interest, and the extinguishment of the debts of the Commonwealth,’ will amount to about \$600,000. The sum which will be raised under this Act, together with the other resources of the Commonwealth, will most probably liquidate the interest account, without further resort to loans for that purpose. This Act is to continue in force five years, and provides such a rule for the assessment of taxes as to fall with gentle weight on those who are little able to bear any addition to their expenses. \* \* \*

“To impose taxes on any class of our fellow-citizens is not very agreeable nor a very popular task, but when, as in this case, the honor and fidelity of Pennsylvania must be sacrificed or a tax of this kind be endured, there are a few, very few men in the Commonwealth worthy to be ranked among her free, intelligent, and upright citizens, who will shrink from their share of the burden. When, too, it is known that those who recommended and sanctioned the bill imposing the tax are no more responsible for the necessity that compelled a resort to it than any of those who are to pay it, the folly and injustice of those who would condemn are rendered still more conspicuous. I found the debt upon which this interest

was to be paid in existence when I assumed the functions of the Executive, and found nothing to pay it with. The treasury was exhausted, and no means left to meet this responsibility but further loans, a sale of the improvements or taxation. The first two were impracticable, and I was driven by stern necessity to the adoption of the latter alternative. I saw but one path before me open to pursuit, and that was the path of duty. I recommended taxation; that recommendation was adopted by the Legislature, and it is a source of proud gratification to me, when I consider that the people of Pennsylvania almost to a man, so far as I have been informed, with a firmness and patriotism worthy of themselves, have yielded to this necessity without murmur or repining. I feel fully convinced that at the expiration of the five years at furthest, with a reasonable degree of prudence, and with strict economy in the management of our affairs, the income of our improvements will render a renewal of this law wholly unnecessary.

“If any difference of opinion exists as to the necessity of this tax, let these questions be answered by those objecting: “Does not Pennsylvania owe this debt? Is she not morally and legally bound to pay it and its interest as it falls due? Can they point out any other mode by which this can be done? \* \* \*

“The deficiency in the funds set apart for the payment of the interest on the public debt falling due on the first day of February next must be promptly provided for. By the Act of 11th June last, the Governor is authorized to procure it on loan, and for that purpose proposals have been invited. Whether the money can be procured, I know not, and in case it cannot, I see no other mode left to avoid the dishonor of the State credit but the sale of a sufficient amount of the stock owned by the State, in one or the other, or all of the banks in which she is interested.”—*Extract from Governor Porter's Message, January 6, 1841, House Journal, Vol. 2, pages 7, 8, 9, 1841.*

## REVIEW OF THE FINANCES

“The subject of deepest interest and greatest perplexity, that calls for our attention, is the financial condition of the State. Although I have, on several former occasions, entered into a full and minute exposition of this matter, I cannot refrain from again presenting it to your consideration, in a manner so distinct and plain as to preclude, I trust, the possibility of misconception on the part of those who feel an honest desire to understand it. I am persuaded that, however embarrassed may be the pecuniary affairs of the Commonwealth, nothing is needed to induce the people to provide means to extricate them but a clear and candid exposition of the nature and extent of the liabilities to which they are subject. The time for concealment, evasion, and deception, on this point, is at an end. The contract has been made. The faith of the State is pledged, and every consideration of duty and of honor require of us to know our true condition, and to provide adequate means to meet our obligations, and to redeem our plighted faith. \* \* \*

“The immediate difficulty of our situation arises mainly from the payment of the interest annually accruing on its debt. This interest is about \$1,800,000 ; and this sum it is incumbent on the State to provide as it becomes due.

“The inconsiderable portion of the funded debt, now redeemable, can be doubtless postponed until more auspicious times, but the interest admits of no such postponement. This is in a great measure payable to those who cannot afford to procrastinate its reception, and whose means of subsistence depend on the faithful adherence of the State to its solemn engagements with its loanholders. \* \* \*

“It is not to be disguised that we are deeply in debt, and that the times call for an unquailing fearlessness in our public functionaries, to meet the emergency and to provide the means for our extrication. The people are already burdened with taxation, and those burdens cannot be diminished if we expect to pay our debts. The conduct and motives of those who make provision to pay them may be misrepresented, and, for

a time, misunderstood. Prejudice, from the sordid feelings of interest, may be invoked, and demagogues and unprincipled politicians will, doubtless, attempt to use it, to answer their own purposes. But the responsibility is one which every honest public functionary must meet fairly and frankly ; and in so doing he will be eventually sustained by the people at large, who never deliberately err, and who always will reward with their confidence an honest and fearless devotion to their true interests, even though it may at first have met with temporary disapprobation.

“The means to pay off the loan under the Act of 4th May, 1841—to pay the foregoing creditors of the State, and the interest on the public debt—must be provided before the Legislature adjourns. Sound policy, nay, common honesty, demands this much at your hands, and I am persuaded no member of the Legislature will shrink from a duty enjoined by such considerations as these.”—*Extract from Governor Porter's Message January 6, 1842, House Journal, Vol. 2, pages 3, 4, 5 6, 7, 1842.*

#### THE ISSUE OF CERTIFICATES

“The State has always met the payment of the interest upon her public debt with punctuality, until the semi-annual payment due on the 1st of August last, when for want of adequate provision for that purpose, certificates of the amount due to each holder of the stock were issued, bearing an interest of six per cent., payable in one year, agreeably to the Act passed the 27th day of July last. It now becomes the imperative duty of the Legislature to make provision as well for its payment as for the payment of the interest falling due on the 1st of February and August next.

“Until some mode of raising the amount necessary for the payment of this interest, less burdensome to the people, is devised, the taxes imposed by existing laws seem to be indispensable. It may be worthy the consideration of the Legislature, however, whether the present defective system of

making assessments and reaching the objects of taxation does not require revision. It is believed, if such revision be judiciously made, that no increase of the taxes now authorized would be necessary to produce an adequate amount from that source to cover the pressing demands made upon the Treasury." \* \* \*

"The resolutions of the General Assembly of the 7th of April last, 'relative to the payment of interest to domestic creditors,' provides that such of the creditors of the Commonwealth as do not choose to receive certificates of stock, shall be entitled to a credit for the amount of their claim on the books of the Auditor General, and shall receive interest at six per cent. on balances due for work done prior to the 4th of May, 1841, interest to be allowed from that date, and on balances due for work done since the 4th of May, 1841, interest to be allowed from the passage of the Act. And the first section of the Act of the 27th of July last, after making certain specific appropriations, directs whatever balance may be in the treasury on the 1st days of August, November, and February then next, after paying current demands on the treasury, to be divided *pro rata* among the domestic creditors having claims for work done prior to the 4th of May, 1841, or for repairs, etc., on finished lines of canal and railroad, previous to the 1st day of April, 1842. In pursuance of the foregoing Acts, claims amounting in the aggregate to \$1,191,710.23 were entered on the books of the Auditor General at the close of the financial year, of which sum \$597,461.78 was for work done prior, and \$594,248.45 for work done subsequent to the 4th of May, 1841. On the 1st day of August the treasury would not admit of a dividend, therefore the first and only installment, twenty per cent., was paid on the 1st of November, together with all interest then due, which amounted, dividend and interest, to \$209,589.43.

"Notwithstanding the very satisfactory results which have grown out of the broad and liberal construction given by the Auditor-General to the resolution of the 7th April, there yet remains a very deserving class of creditors, who



have received none of its benefits, nor was it at all practicable to bring them within its provisions. The poor laborers, scattered along the improvements, who with their own hands do the work necessary to keep them in navigable condition, should be the objects of the first care of the government. In this instance they were entirely overlooked, the appropriation for repairs being inadequate.”—*Extract from Governor Porter's Message, January 4, 1843, House Journal, Vol. 2. pages 8-11, 1843.*

#### THE LEGISLATURE AGAINST THE DOCTRINE OF REPUDIATION

House Journal, 1842, Vol. 1, pages 14 and 56.

The Speaker laid before the House the proceedings of a meeting of the inhabitants of the city and county of Philadelphia, relative to the repudiation of the State debt.

“Whereupon a motion was made by Mr. Wright :

“That the said proceedings be referred to a select committee, and the said committee be instructed to report against the doctrine set forth in the proceedings of said meeting, and give to the creditors and citizens of this Commonwealth the abiding determination of the constituted authorities of this State to maintain the faith of the Commonwealth. Adopted—ayes, 97 ; nays, 0.

“Hendrick B. Wright, Thaddeus Stevens, John H. Deford, John J. McCahan, and William A. Crabb were appointed said committee.”

“Journal of House of Representatives, Vol. 2, page 44, No. 10.

“Report relative to the subject of repudiating the payment of the public debt.

“Read January 10, 1842.

“Mr. Wright, from the select committee, to whom was referred the proceedings of a meeting held in the city of Philadelphia, on the 30th day of December, 1841, on the subject of repudiating the payment of the public debt, made report, viz :

“ That from the fact that the meeting at the court house, in the city of Philadelphia, was held by the citizens of the State, lawfully assembled, they feel bound to treat the subject with that respect, at least, which parliamentary rules require, however they may differ in opinion with the persons who participated in its proceedings. The Constitution of the State and the inestimable bill of rights, our great Magna Charta, which forms a part of it, declares “ That the citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the power of government for redress of grievances, or other proper purposes, by petition, addresses, or remonstrance.’

“ This rule being laid down by the fundamental law of the land, brings the proceedings of the meeting properly before the law-making power of the Commonwealth, and is binding upon the Legislature, to at least *receive* the proceedings. The right of petition is inviolate. So should it be regarded. And the person who complains of a grievance has a right to be heard ; and should this constitutional provision be disregarded, the Legislature would be guilty of as flagrant a violation of law as, in the opinion of your committee, the persons who participated in the town meeting of Philadelphia were of that good order and moral conduct so essential to the perpetuation of our free government.

“ Granting, then, that they have a right to be heard, and conceding, too, that the subject of their meeting was constitutionally a ‘ proper ’ one—your committee next examine its merits, if it have any, and the influences it is calculated to produce on the general welfare of the country. Its merits are all demerits, as relates to public faith—and its influence, as its participators, it is alleged, have character for morality, integrity, and patriotism, are of the worse possible tendency. But conceding that the meeting was composed of respectable citizens, a most strange and unaccountable spectacle is presented, for the first time in this Commonwealth, of an attempt to repudiate the payment of the State debt. In other words, to say to our foreign and domestic creditors, who have from time to

time advanced funds to carry on the affairs of the government, and to construct our works of internal improvement, you shall neither be paid your principal nor interest. A doctrine certainly of the most abhorrent character.

“Your committee cannot but regard the measure, if carried into practice, as but a torch to kindle the embers of revolution ; the commencement of a state of things as much to be deplored as though a foreign foe was upon our borders. Where did this disposition to create a want of confidence in the public faith and credit originate ? Who are its advocates ? What is to be accomplished by it ? Is it not, in fact, a plan set afloat by the mad and reckless schemes of wild speculation in the State stocks, designed to weaken the public opinion in the integrity and honesty of the Government, that a few unprincipled stock jobbers might speculate upon the timidity and fears of the holders of the State loans ; or is there a bolder game of agrarianism, which aims at the destruction of the monuments of industry and enterprise everywhere to be seen in the Commonwealth, for the purpose of wholesale plunder ? If the persons participating in this meeting were influenced by good motives, they are to be pitied ; if by bad ones, their course cannot be too severely condemned. What are their arguments ? One of the resolutions declare ‘ that in the contracting of the so-called State debt, the faith of the Commonwealth had been unconstitutionally and illegally pledged, and the people are under no moral, legal, or political obligation to bear any burden of taxation, or make any sacrifice of personal comfort to keep it unbroken.’ Another, in substance, that the Constitution confers no power upon the Legislature to construct works of internal improvement, or to contract loans ; and that they will resist the collection of taxes imposed by law, for the payment of the State liabilities. As to the authority of the State Legislature to borrow money, or construct works of internal improvements, your committee deem it unnecessary to enter into any argument.

“It will be sufficient to say that the power of the State is sovereign and supreme in all matters not forbidden by the

Constitution, or that may not conflict with the Constitution of the United States. And in that sovereign capacity, its Legislature may contract loans, issue certificates of stock, and do any matter or thing not prohibited in express terms by the Constitution. If, then, no powers of this kind are conferred, they are certainly not prohibited. In addition to this, the Supreme Court of this State, which is the Constitutional tribunal, has put this question to rest. Would it not, then, seem conclusive that the Legislature had absolute power over the subject? That their act was binding; and, as such, their laws should be enforced? Besides this, however, there has been a peaceful and willing acquiescence, by the citizens at large, during the time the State debt has been gradually augmenting; and the people themselves, by repeated expressions, at the ballot-boxes, have decided in favor of the measures of internal improvement, and instructed their representatives, in General Assembly met, to vote for appropriations of money to extend them. The whole question has been one of public notoriety, and in which all have participated.

“But suppose this had not been the case, and the Legislature had acted against the opinions of a majority of the people of the Commonwealth, still they were their representatives, to whom all power was delegated, and the laws would have been equally operative in their effect, and the State bound by the enactment.

“What an exhibition does this plan of repudiation present to the other States of the Confederacy, and to the world? A sovereign and independent government defrauding its creditors, and violating every principle of common honesty and justice! The influence of Pennsylvania on the Union is powerful. Its acts and operations vibrate from Maine to Georgia, from the Atlantic to the Lakes. Her central position, her wealth and power, give to her an importance that should caution her citizens against the adoption of pernicious measures. Spare the reflection that will be made by the universal world, that the land of our fathers has forsaken the ways and

examples they set before us, and permit not our beloved Commonwealth to become a theme of reproach, a by-word.

“There is no moral influence or patriotic devotion to the country and its law that will appeal to the resistance of the force of the statute-book. And yet the resolutions under consideration say: ‘That we will unitedly and determinedly resist, by all constitutional and legitimate means, the collection of the present, or any future tax, levied for the purpose of paying either the interest or principal of the so-called State debt.’ What the authors of the resolutions call ‘constitutional and legitimate means’ to-day, may be called open rebellion to-morrow. It is the entering wedge, and who can but believe that if the promulgators of such doctrine had the power in their hands to resist the collection of taxes, that it would not be instantly done? Resist taxation! Resist the operation of the law of the land! Nullify the law, and there is an end to the government. It presents the peaceable administration of civil policy and obedience on the one side, and on the other, open and violent force, called, it is true, by the mild name of ‘constitutional and legitimate resistance.’ Inculcate, by precept and example, the violation of one law, and all others become weak, futile, and inoperative. How truly so in a country where men are educated to govern themselves. The highest duty the citizen has to perform to his country is the strict observance of her laws. Here public opinion is the great lever by which the conduct of men is regulated, and the science of government directed. Vitate that, corrupt the public mind, and a state of disastrous consequences is the inevitable and certain result. All experience shows it. No one can doubt it.

“The same bill of rights which declares that ‘all men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property and reputation, and of preserving their own happiness,’ also declares that ‘no standing army shall, in time of peace, be kept up without the consent

of the Legislature,' showing at a glance that the founders of the government relied on the integrity and intelligence of the people, and that the laws would be obeyed without a resort to the coercive power adopted by despots and tyrants, where the decree of the legislator is enforced at the point of the bayonet.

"It is the first instance in this government, where the sentiment has gone forth, that 'the people are under no moral, legal or political obligation to bear any burden of taxation, or to make any sacrifice of personal comfort to keep the faith of the State unbroken.' It is to be hoped it will be the last. It is, virtually, a direct appeal to rebel, to throw themselves, under that same Constitution (with false notions of their rights), which is their only safeguard, and the bulwark of the State government.

"Your committee cannot conceive of a more mischievous plan of operations than the one recommended by the meeting which adopted these resolutions. The stock of Pennsylvania is mostly held by foreigners, and for which they have paid a valuable consideration. To pay it is a point of national honor. What would be the consequences of repudiation? Where is the enterprising trader upon the high seas who would be safe in his property or person? Either would be liable to seizure. The stars and the stripes at the mast-head, which now is our mariners' guide and safeguard on every ocean, would no longer be regarded by the envious eye of the world as the proud emblem of that people who have knowledge and virtue enough to govern themselves, but rather as the flag of a mercenary band, who, having obtained, by deceit, and fraud, and falsehood, the wealth of other nations, have neither the magnanimity nor the honor to repay.

"God forbid that the faith, and honor, and credit of this great Commonwealth should ever become the subject of reproach in the mouths of monarchs; and Pennsylvania, too, the first in the confederacy in wealth and influence—the keystone of the federal arch—the right arm of the republic—represented in the glorious constellation of the immortal thirteen which first struck for independence, should hereafter

be accused, at the great bar of nations, for having broken her faith, and, coward-like, shrunk from the payment of her just debts. How humiliating the thought ! Should not the terror of the popular voice be brought to bear with such force on such doctrines as to forever seal the lips of the mouths that utter them ?

“ Let the strict observance of the plighted faith of Pennsylvania be the watchword of her citizens, and let our children be taught to regard it as the best inheritance of their fathers.

“ Your committee recommend the following resolutions :

“ *Resolved*, That the State stock issued by virtue of the laws of this Commonwealth is constitutionally correct, and that the citizens of the State are legally and morally bound to pay and redeem the same.

“ *Resolved*, That the faith and credit of the State does remain, as heretofore, unbroken, and that the property of the citizens is legitimately the subject of taxation for the full and entire payment of all the just demands on the treasury thereof.

“ *Resolved*, That the doctrine of repudiation of the liabilities of this Commonwealth is obnoxious in its tendencies and calculated to be destructive of the free principles on which the government is based, and that every good citizen is bound by all moral as well as legal considerations to cheerfully contribute his share towards the liquidation of the State debt.”

#### THE CHARGE OF REPUDIATION CANNOT BE FASTENED UPON PENNSYLVANIA

The person who has written the most ably and most at large on the subject, the Honorable John William Wallace, of Philadelphia, and who published anonymously, in 1863, a pamphlet, entitled “ Pennsylvania as a borrower ; some considerations on her ancient credit ; her rising prospects and her policy in future,” in which the whole argument against the State was presented, was yet impelled by the truth to say “ that she did not at that time (1842—43, 44), it is true, repudiate her debt, as it has been charged upon her that she did. On the contrary, she here acted with a sense of integrity. But she has wofully discredited her capacity to manage concerns of finance, and she was more backward than she ought to have been in laying taxes to pay her interest.”

**COMPILATION OF THE RULES**  
**OF THE**  
**COURTS OF COMMON PLEAS**  
**OF THE**  
**STATE OF PENNSYLVANIA**

If it be true, as has been many times said, that the object of court rules is to "promote the administration of justice," to an Association, which avows that as one of the reasons for its existence, no apology is needed for the preparation of this compilation. If it be a good thing that each court in the State should be advised of the improvements in practice reached through the experience of every other court, then this compilation, and a report each year from some one of our committees showing the important changes made in the several districts during the year, will enable every court not only to keep abreast of the times, and to be in touch with every other of equal grade, but must ultimately result, to a greater or lesser degree, in establishing a system of rules which shall be the product of the united Bar of the State. It would be difficult to conceive of anything more "devoutly to be wished," or more clearly within the lines of the work of this Association. It is said that "a bad workman quarrels with his tools," but if he can have and should have better tools, he is a lifeless workman indeed if he does not complain to those who supply the tools. That the times are ripe for such complaint is evidenced by the fact that within the past two years fully one-third of the courts have completely revised their rules, and some are still engaged in the revision.

The Rules of Court, forming the basis of our action at every stage of progress in every cause, are necessarily more important to the practicing lawyer than even the new legislation of his State; just as the latter comes nearer to the average life of the citizen than does the legislation, of the Nation. An upright and progressive Bar and Court, with adequate Court



Rules, may, without additional legislation, administer justice promptly and efficiently in most of the varied circumstances which this age of progress newly thrusts upon them. Without adequate Court Rules any additional legislation, unless so framed as to take the place of such rules, must lose the greater part of its usefulness.

It is not claimed for this compilation that it shows the minute shades of difference in the rules of the various courts. That would require a publication so cumbersome as to be practically valueless. The object here sought is not to so present the matter that disputing counsel may argue herefrom touching any question of practice which may arise. What is sought is to present the substance of the rules, as far as may be within reasonable limits, in the language of the courts; but at all events to get the principle embodied in the rule, and contrast it with rules on the same subject in the other courts. It may safely be said that no two men would express any one thought in the same language, if for that purpose a dozen words were required, unless one or both should have enclosed them in quotation marks. It is not believed that any such uniformity will be attained hereby, but the attempt here is to foster a tendency in that direction.

It was found impossible to always place the rule under the same head as it appeared in the various districts, for the reason that the same rule often appeared under one head in one district, and under another head in another. So also some districts made their rules as short as possible, and others embraced a number of separate rules covering an entire subject in one long paragraph denominated a rule. It was, therefore, found necessary to disintegrate, add together and rearrange, as far as possible in keeping with the most approved method. Except in very clear cases, rules apparently supplanted by recent legislation, are included.

It is feared, though much care has been taken to prevent it, that some of the isolated rules adopted by the various courts have not been supplied. In many of the districts the rules are so old, and the amendments so numerous, that it will be surprising indeed if a number of the latter were not omitted from the "thing of shreds and patches" furnished as a copy of the 'Rules of Court.'

An illustration will, perhaps, best explain the system employed in the compilation. One of the commonest of the rules hereinafter set forth reads as follows :—

“ All agreements of (parties or, 23) attorneys touching the business of the court (or any matter before or to be brought before the court, 23) shall be in writing 3, 51, otherwise (in case of dispute, 24) they shall be considered of no validity, 1, 2, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 38, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, except when made in open court respecting some matter before the court. 6, 17, 18, 30, 37, 48.”

Therefrom it will appear that in the 1st Judicial District, and in others similarly placed above, the rule is :

“ All agreements of attorneys touching the business of the court shall be in writing, otherwise they shall be considered of no validity ;”

while in the 3d and 51st Judicial Districts the rule is :

“ All agreements of attorneys touching the business of the court shall be in writing ;”

in the 23d Judicial District the rule is :

“ All agreements of parties or attorneys touching the business of the court, or any matter before, or to be brought before the court, shall be in writing, otherwise they shall be considered of no validity ;”

in the 24th Judicial District the rule is :

“ All agreements of attorneys touching the business of the court shall be in writing, otherwise, in case of dispute, they shall be considered of no validity ;”

and in the 6th Judicial District, and in others similarly placed above, the rule is :

“ All agreements of attorneys touching the business of the court shall be in writing, otherwise they shall be considered of no validity, except when made in open court respecting some matter before the court.”

At the time this work was begun there were fifty-one judicial districts in the State, there are now fifty-four, and doubtless the number will grow every second year. It is, therefore,

necessary to add that the numbers of the districts herein given embrace the counties as follows :

1. Philadelphia	19. York	35. Mercer
2. Lancaster	20. Union, Snyder and	36. Beaver
3. Northampton	Mifflin	37. Warren and Forest
4. Tioga	21. Schuylkill	38. Montgomery
5. Allegheny	22. Wayne and Pike	39. Franklin
6. Erie	23. Berks	40. Indiana
7. Bucks	24. Blair	41. Juniata and Perry
8. Northumberland	25. Clinton, Cameron and	42. Adams and Fulton
9. Cumberland	Elk	43. Carbon and Monroe
10. Westmoreland	26. Columbia and Mon-	44. Wyoming and Sulli-
11. Luzerne	tour	van
12. Dauphin	27. Washington	45. Lackawanna
13. Bradford	28. Venango	46. Clearfield
14. Fayette and Greene	29. Lycoming	47. Cambria
15. Chester	30. Crawford	48. McKean and Potter
16. Bedford and Somer-	31. Lehigh	49. Centre and Hunting-
set	32. Delaware	don
17. Butler	33. Armstrong	50. Lawrence
18. Clarion and Jefferson	34. Susquehanna	51. Lebanon

The rules of the 31st District are not included in this compilation. A committee of the Bar are preparing new rules, and are about ready to report to the court, but as the court has not yet approved their work no copy could be had.

It was intended originally to prepare for this time also a similar compilation of the rules of the various Orphans' Courts and the Courts of Oyer and Terminer and Quarter Sessions of the Peace, but the time required, and the length of the present compilation, alike forbade it. If it is found that a real benefit has been gained hereby, doubtless some other member of the Association will willingly undertake the task as to those courts.

ALEX. SIMPSON, JR.

#### ABANDONMENT

1. Unless a declaration (or statement, 9, 17, 20, 29, 46, 49, or description, 13, 22, 23, 26, 34, 36, 37, 48) (or bill of particulars, 9) (when necessary, 17, 30, 47) be filed within one year (three months, 5, 14, 17, 50) (six months, 9, 27, 41) (fifteen months, 30) (two years, 29) from the return day to which an action is brought (from the commencement of the suit, 13, 23, 26, 45)

(or an appeal is entered, 1, 17, 28, 36, 50) (or the cause be not put at issue for two years (six months, 14) from the return day, 15, 32) (if the defendant be within the jurisdiction of the court, either by service or by general appearance, 17) a non-pros will be entered, 4, by the prothonotary as a matter of course, 9, 14, 15, 20, 22, 24, 28, 34, 35, 37, 41, 44, 45, 48, 50, (upon written præcipe, 5, 13, 23, 26, 27, 47, or by order entered in the rule-book, 17) (on the request of the defendant's attorney, or any officer to whom costs are due, 25, 29, 46, 49) (unless the parties otherwise agree by writing filed, 30, 32, 33, 36, or the court upon cause shown shall extend the time, 1.) But this rule shall not extend to appeal cases in which parties may go to trial on the transcript. 29.

2. Unless a cause is put at issue within one year from the first day of the term to which an action is brought, or to which an appeal by the plaintiff from the judgment of a justice of the peace is entered, a judgment of non-pros shall be entered by the prothonotary, as of course, on the request of the defendant's attorney, or of any officer to whom costs are due. 8, 12, 51.

3. Where a cause is not at issue, and the plaintiff has neglected for one whole year to take any step for bringing it to issue, the defendant may move the court for a discontinuance on the ground of abandonment; and if the motion contains a copy of the docket entries, and it appears that no step was taken by plaintiff to bring the case to issue within the year, judgment of non-pros will be entered in the office on the second day of the next succeeding term, unless before that time the neglect shall have been satisfactorily accounted for, and an affidavit filed, with the pleadings, disclosing merits. 16.

4. Where a cause is not at issue, and the plaintiff has neglected for one whole year to take any step for bringing it to issue, if the defendant will file and read in open court, on the first day of a regular term, an affidavit showing the fact, and that the delay is in no respect attributable to him; that he has not been able to serve a rule on the plaintiff to take the next step in the pleading; and if he will annex to the affidavit a copy of the docket entries, he may have a rule *nisi* for judgment as in case of a discontinuance, which shall become absolute on the last day of the next succeeding term, unless

the plaintiff shall, in the meantime, have secured the discharge of the rule. 39.

5. If there is no appearance for the plaintiff within three calendar months (six months, 43) (twelve calendar months, 28, 33) from the first day of the term to which an appeal is entered, the prothonotary shall enter judgment (for the appellant, 27, 28) of non-pros, and issue execution for costs, 33, 41, 43. Provided a rule to appear has been duly served at least ten days before the expiration of that time. 14.

6. Unless a statement of the plaintiff's demand shall be filed on or before one year after an appeal is filed, if the plaintiff is the appellant, or two years if the defendant is the appellant, a non-pros. may be entered on motion in open court without rule. 6, 37.

7. Where any cause has or shall stand on the docket for one whole year, from the return day of the writ, or in appeal cases, from the first day of the term to which the appeal was entered, without a declaration being filed; or where a declaration is filed and no plea is put in, nor no rule to plead taken out within a year; or where no replication is put in for a year after the date of the plea; or where for any other reason the cause is not at issue, and the plaintiff has neglected for a year to take any measure for bringing it to issue; or where the cause, being at issue a whole year, has not been set down by either party for trial; such cause shall be considered as abandoned, and defendant may move the court for a discontinuance. The motion will be allowed or not, as the court may deem just in the cause. The court will take off the discontinuance, and reinstate the cause upon the plaintiff's affidavit of merits, and upon his compliance with such terms as the court may impose, if the application be made promptly, but not after one whole term has intervened. 42.

8. In case the plaintiff in any appeal from the judgment of a justice of the peace, fails to file his statement on or before the first Monday of the month succeeding the first day of the term to which the appeal is returnable, the prothonotary, on motion of the defendant or his counsel, after such default, shall enter a judgment of non-pros. Where the plaintiff has counsel on record, ten days previous notice shall be given such counsel of the intention to take such judgment. 47.

9. In appeals from the judgment of justices of the peace, the appellant shall, within ten days after the filing thereof, file a specific affidavit of claim or defence, as the case may be, and in the same shall set forth that the appeal is not taken for the purpose of delay, but because he believes that injustice has been done to him, 27, 41, and on failure so to do, the prothonotary shall, on a præcipe from the appellee or his attorney, enter judgment for the plaintiff for the amount given by the justice of the peace with interest and costs, if the defendant be the appellant, and for the defendant for costs if the plaintiff be the appellant. 9.

10. In appeals from judgments of justices of the peace, if the appellant shall take no step to bring the cause to issue for four calendar months (three months, 5) (one year, 24) from the first day of the term to which the appeal is entered, (the appeal may be quashed on motion, 24) the appellee may thereafter, whilst the default continues, have judgment in the office, if against the plaintiff of non-pros, 5, if against the defendant for the amount of the justice's judgment, with interest, 39, and costs. 16.

11. In all actions over three years old, counting from the return day, or day of entry of an amicable suit, and more than one year since anything done marked of record, if the case is not at issue or entitled to be by act of the parties, the prothonotary shall enter judgment of non-pros, 6, 37, and issue execution. 28, 33.

12. Whenever an action is brought and no move made by the plaintiff within six years to bring it to trial, the prothonotary shall, on motion of the defendant, or his representative, mark the same not to be put on the trial list without the special order of the court—and if no such order be made within one year thereafter, the prothonotary shall enter judgment of non-pros, which judgment shall be final. 46, 49.

13. Any action which is or shall be at issue, either in fact or law, and shall be left off the trial list for one year afterwards, shall, of course, be marked by the prothonotary "not to be brought forward," and after the expiration of a year from the time it is so marked, he shall in like manner enter a non-suit, 29, and when it is brought forward within the year three months notice in writing shall be given to the defendant or his

attorney, before it shall be tried; and as often as the action is left off the trial list for a year from the time it is marked "brought forward," the prothonotary shall proceed as hereinbefore directed. 20.

14. All actions at issue, in fact or in law, and left off the trial or argument list for one year, shall, of course, be marked by the prothonotary "discontinued," 36, unless otherwise ordered by the court. 18.

15. Whenever an order shall be made in any cause staying proceedings by the plaintiff therein until the payment of costs in any previous action, it shall be the duty of the prothonotary, at any time after the expiration of one year (six months, 40) from the making of such order, at the instance of any person interested, to enter judgment of non-pros, unless the person liable to pay such costs shall have previously filed written evidence of the fact of payment. 5, 10, 16, 40.

#### ABATEMENT

16. If the plaintiff in any action be dead, and the person to whom the same shall survive be not substituted within one year, or if the defendant be dead and process be not issued within one year to make the proper person a party thereto, the suit shall abate; (and the prothonotary upon affidavit of the death and time elapsed, 5, 27, 28, 33, 36, 37, 40, 41) and after suggestion thereof in open court, shall mark the action abated accordingly. 4, 5, 9, 10, 14, 16, 27, 28, 33, 35, 36, 37, 40, 41.

17. If the plaintiff in any action be dead, and the person to whom the same shall survive be not substituted within one year; or if the defendant be dead, and process be not issued within one year to make the proper person party thereto, any person interested in the suit or costs thereof, may, upon affidavit of the death and the time since elapsed, or where the time appears from the suggestion on the record to have elapsed, have a rule in term time on motion to show cause why the suit should not be abated, returnable on the first day of the next term; upon the return of which, if sufficient cause be not shown to the contrary, the rule may be made absolute, and the suit accordingly abated, if the court be satisfied that reasonable notice to the adverse parties in interest shall have been given, if practicable. 18.

**ACCOUNTS**

[See Assignees, Trustees, &c.]

**ADMISSIONS FOR PURPOSE OF EVIDENCE**

[See Evidence.]

**ADVERTISEMENTS**

[See Notice.]

**AFFIDAVITS**

18. Attorneys holding commissions as Notaries Public, or who are otherwise authorized to administer oaths, shall not take nor attest (any affidavit to be filed or read in any cause in which they are interested, 23,) the affidavit of any party represented by them, 10, and all affidavits taken in violation of this rule shall be treated as null. 1, 2, 23.

19. Whenever an affidavit filed shall contain a caption correctly giving the names of the parties to the suit or proceeding in which it is filed, the court in which, and the term and number to which the suit or proceeding is entered, said caption shall be deemed to be a part of said affidavit, and it shall not then be necessary in the body of such affidavit to recite the title of the cause or its pendency, and the parties may be referred to as plaintiff, defendant, deponent, or the like, without mentioning their names. 23

20. All affidavits required by the rules of court may be made by the agent or attorney of the party, 21, 40, where such agent or attorney is cognizant of the matters set forth therein, 5, 8, 17, 20, 25, 26, 27, 29, 36, 46, 49, and believes them to be true, 9, 12, 18, 28, 33, 35, 41, 51 (and reasonable cause is shown why the party could not make the same in person, 37); but if made by an agent the character of the agency and the means of knowledge must also be set forth. 14.

21. Whenever in the rules of court an affidavit is required, it shall be sufficient if the same is made by the plaintiff, defendant, his agent or attorney, or by some person having knowledge of the facts, although the rule may in terms specify that the same shall be made by the plaintiff or defendant. 47.

22. Any affidavit required by these rules may be made by the party in whose behalf it is offered, or by any other person



having actual personal knowledge of the truth of the matters therein set forth. 22.

23. Such affidavits may be sworn to before any person duly authorized, by the law of the place where sworn to, to administer oaths, 28, 35, 41 (if the affiant reside in some other of the United States, 9, 12, 33, 51) but if such officer have no official seal, his authority shall be evidenced by the certificate of a court of record, under its seal, or otherwise to the satisfaction of the court. 37.

24. All petitions, answers, exceptions of fact, reports of sale, proof of publications, and, generally, all papers stating facts on which the court or a judge may be called to act, shall be verified by the affidavit of the petitioner, his agent or attorney, or by someone cognizant of the facts, which affidavit may be made before any person authorized by law to administer oaths. 47, 50.

25. All papers stating facts on which the court may be called to act shall be verified by affidavit, but return of service made by the sheriff shall be considered as made under his oath of office in all cases. 17.

#### AFFIDAVITS OF CLAIM AND DEFENSE

[See also §§292, 499, 1438 and 1751.]

26. In all actions of assumpsit, the prothonotary shall endorse on the writs issued (the time within which the affidavit must be filed, 38) the following notice of the time within which the affidavit of defense must be filed:

*" To the Defendant within named :*

*" You are hereby notified that if a copy of the statement of plaintiff's demand is served on you not less than fifteen days before the return day of this writ, which will be the*  
*day of , 18 , it will be your duty*  
*to file an affidavit of defence on or before the return day ; or, if*  
*served on you less than fifteen days before, or on or after the said*  
*return day, it will be your duty to file an affidavit of defence*  
*within fifteen days after service on you of said notice."* 7.

27. The copy of statement, and the notice required to be given of the filing of the statement, shall, in every case, inform

the defendant that if he do not file an affidavit of defence within fifteen days after service thereof, judgment will be entered against him by default. 16.

28. To entitle the plaintiff to judgment for want of an affidavit, or for want of a sufficient affidavit of defence, the affidavit of claim filed by him shall state the amount he verily believes to be due from the defendant, and such facts as are necessary to support his claim, together with a list of all credits known to him, and shall contain a copy of the book account, or instrument of writing, if any, upon which the suit is brought, unless brought upon the record of any court within the county, or upon the record of a deed, mortgage, mechanics' or municipal claim, or other instrument of writing recorded in the county, in which cases there shall be a particular reference to the office, number and term, or book and page, where the same can be found. 50. Where, however, a statement is on file, made under the Act of May 25, 1887, which contains all the essential facts, the affidavit of claim shall be sufficient if it is made to the truth of the facts contained in the statement. 17.

29. In all actions of assumpsit (and scire facias, 43) as defined by the Act of Assembly, approved May 25th, 1887, entitled "An Act providing for the abolition of the distinctions heretofore existing between actions ex contractu and ex delicto, so far as relates to procedure, etc.," wherein the plaintiff has filed a statement of his demand (and the same has been served upon the defendant, or the defendant has had notice of the filing of the same, 43), as required by the said Act of Assembly, and the defendant has neglected to file an affidavit of defence at the time and in the manner prescribed in said Act, judgment by default may be taken (upon any motion day, 21) at any time upon motion in Court or by præcipe in the office of the prothonotary, on payment of the legal fee. 12, 43, 51.

30. In all actions of assumpsit founded on book accounts, bills, notes, bonds, and other instruments of writing for the payment of money, or for the performance of some other duty or thing of a specified cash value, whether under seal or not; in all suits upon recognizances, judgments, mortgages, mechanics' liens and other records, and upon judgments of foreign States duly certified, and the judgments of justices of other States, if the plaintiff shall have filed a concise statement of his demand

in accordance with the provisions of the Act of Assembly (with his præcipe, 30) (on or before the return day of the writ, 38, 48) (and the said statement shall have been duly served upon the defendant at least fifteen days before the return day of the writ, which shall have been duly served, 6, 30), he shall be entitled to a judgment by default (to be moved for before and entered by the prothonotary, 30) for the amount so claimed, at any time after the return day of the writ, unless the defendant or some one for him knowing the facts, shall have filed an affidavit of defence in which the nature and character of the defence shall be clearly and specifically stated, 30, 38. Provided that no affidavit of defence shall be necessary in suits on judgments obtained in foreign States or countries, unless a full copy thereof, properly certified, be filed; nor upon claims appearing upon their face to be outlawed, 48; or where the presumption of payment has arisen by lapse of time. 6.

31. In all actions hereafter to be brought on bills, notes, bonds, records, or other instruments of writing, for the payment of money, and on claims for the loan or advance of money, whether the same be reduced to writing or not, and for the recovery of book debts, and in all actions of debt or scire facias on judgments, mortgages, liens of mechanics or material men, or on recognizances of bail for stay of execution, or to prosecute writs of error, or of certiorari, it shall be lawful for the plaintiff at any time after the expiration of thirty days (fifteen days, 29) (forty days, 4) from the return day of the writ, to enter a judgment by default, of course, notwithstanding an appearance by attorney, unless the defendant shall have previously filed an affidavit of defence, setting forth the nature and character of the same, 41; but no judgment shall be entered unless the plaintiff shall (at least fifteen days, 29), on or before the return day of the original process (within two weeks after the return of the writ, 4), file in the office of the prothonotary, with his narr., or statement (when a narr. or statement is necessary), a copy of the instrument of writing, book entries, record or claim on which the action has been brought, 4, 34, and on contracts for the loan or advance of money, not in writing, an affidavit setting forth the terms of said loan or advance, with the date and amount thereof, and on book debts an affidavit of his belief of the correctness of the accounts filed, and the balance justly due

him thereon. But if the copy or affidavit be not filed on or before the return day, the plaintiff shall be entitled to judgment, if no affidavit be filed, on giving thirty days (fifteen days, 29) notice to the defendant of the filing of the proper papers. 8, 25, 29, 46, 49.

32. When the plaintiff's action is founded

*First.*—On a judgment, certified transcript from the Orphans' Court, decree or order of a Court of record for the payment of money, or recognizance, mortgage, municipal claim, or claim of a mechanic or material man filed for lien under the Acts of Assembly; and the plaintiff has filed a copy of the record or instrument sued on, or has filed in lieu thereof, where such record or instrument is on file or recorded in a public office of this county, or reference to the place where the same may be found; or,

*Second.*—On a bond, bill, note or other instrument of writing for the payment of money, and the plaintiff has filed a copy of the same with all endorsements; or,

*Third.*—On a book account, and the plaintiff has filed a copy of his book entries, together with a statement of all credits to which the defendant is entitled, verified by affidavit; or,

*Fourth.*—On a contract for the payment of money, express or implied, not embraced in the preceding classes, and the plaintiff has filed a bill of particulars, with an affidavit stating the sum he believes to be due him, and justly recoverable in such action; If such copy, reference or bill of particulars, and the plaintiff's declaration, where one is necessary, were filed on or before the return day of the writ, the plaintiff may, at any time, after fifteen days from the return day of the writ, enter judgment against the defendant, of course, in the office, for want of an affidavit of defence, stating specifically the nature and character of such defence, 39, 42, except when the action is against an executor or administrator, or other person, sued in a representative capacity. 16.

33. An affidavit of defence shall be made in actions of assumpsit, of debt on official bonds, in writs of scire facias on judgments, mortgages, liens of mechanics and materialmen, municipal liens, transcripts from the Orphans' Court, on recognizances, and in all appeals from judgments of justices of the peace where the action, if suit had been brought in court would

be assumpsit, and in all cases where the debt or damages can be liquidated without the aid of a jury. 41.

34. In actions on recognizances, judgments, mortgages, liens of mechanics and material men, municipal claims, transcripts from the Orphans' Court, or other records, policies of insurance, book accounts, bonds, bills, notes and other instruments of writing, and on all contracts for the payment of certain sums of money, whether the same be in writing or not, and whether expressed or implied (if the debt or damages can be liquidated without the aid of a jury, 5, 17), and in appeals from the judgments of justices of the peace where the cause of action is of the same nature, if the plaintiff having filed his statement or declaration, where one is necessary (shall file an affidavit of claim, 17), (shall file an affidavit stating the amount he verily believes to be due from the defendant, together with a copy of the book entries, or instrument upon which the suit is brought, or where the claim is not evidenced by writing, a brief setting forth a full and detailed statement of the same, verified as aforesaid, 27, 28, 33, 35), (and shall serve a copy thereof upon the defendant or his attorney of record, unless service of copy shall be waived, 17), he shall be entitled to judgment in original cases at any time after (fifteen days, 17, 24), (ten days, 27), (twenty days, 28, 33), (the second Saturday, 41), (and service of the affidavit of claim and statement, when service of the statement is required, 17), and after the return day of the writ, and in appeal cases after the first day of the term to which the appeal is entered, unless the defendant (or his attorney or agent, conversant with the facts, 17), shall have filed an affidavit of defence, stating therein specifically and at length the nature and character of his defence. 5, 17, 24, 27, 28, 33, 35, 41. (Provided that in actions on mortgages, mechanics' liens, recognizances, or other records of the several courts of this county, a copy shall not be required if the plaintiff files with his præcipe a proper reference to the place of record, or entry of such mortgage, mechanics' lien, recognizance or other record, 41, and in actions on policies of insurance, a copy shall not be required, if the plaintiff embodies in his affidavit of claim a statement containing the date of the policy, a brief description of the property or interest insured, the peril or perils insured against, and the time and place when and where the loss occurred, and a description

of the property injured or destroyed and the value thereof. 5). But all such judgments must be taken, if at all, within three months after the return day of the writ. 14.

35. In actions on written instruments and book accounts, when the narr., with a copy of such instrument or account, has been filed at the time of making up the trial list for such term, and in actions of scire facias, an affidavit shall be filed by the defendaut setting forth the character and grounds of defence, and so much of the plaintiff's cause of action as shall not be therein denied shall be taken as confessed. If not entitled to judgment at the first term it may be taken at any subsequent term, if an affidavit be not filed after a rule for that purpose shall be entered and served. Provided, that such copy shall not be required in actions on policies or contracts of insurance. 22.

36. In all appeals from justices of the peace taken in suits founded on contracts, express or implied, and in all actions of assumpsit and scire facias (except scire facias upon recognizances of bail for appearance in criminal cases in the courts of oyer and terminer and quarter sessions) the plaintiff having complied with the requisites hereinafter mentioned, may at any time before or after the return day of the writ, in cases of summons, capias, or scire facias, or after the filing of the transcript in cases of appeals, enter a rule of course upon the defendant to file an affidavit of defence to the cause of action within fifteen days or judgment. Service of this rule shall be made upon the party, if resident in the county, by copy delivered to him, or left at his place of abode with an adult member of his family, or of the family with which he resides, and if not so resident, upon his attorney; and if an affidavit of defence be not filed within fifteen days thereafter, excluding the day of service, judgment shall be entered by the prothonotary, as of course, upon præcipe filed; provided that the summons, capias or scire facias shall have been duly served; provided also, that the plaintiff shall not be entitled to the said rule until he shall have filed a declaration or statement (if the case be one in which it is required), and also an exemplification of the judgment, decree, recognizance or other record on which the action is founded, if the same be not within or on file in this county, but if within or on file in this county, a paper (in lieu of the exemplification) containing a brief reference to the court or

office in which the judgment, decree, recognizance, mortgage, claims, transcript, or other record on which the action is founded, remains, and the number and term, or volume and page, or the file, as the case may be, where the said matter of record may be found; or if the action be founded on a deed or other writing, or a book account, the plaintiff shall file a copy of the deed, article, bond, note, bill, written memorandum, or contract, or other instrument, or of his book account, as the case may be; and in all other cases, where the plaintiff's claim is not founded upon a record or writing, he shall file a specification of his claim containing a particular statement of his account, the articles sold or claimed and their values, or the sum of money lent or advanced, or paid, laid out or expended, or had and received to use, or work and labor done, or service rendered, or other matter claimed or alleged. In all the foregoing cases where the defendant is entitled to credits, the plaintiff shall file with the exemplification or memorandum of record, copy of writing or specification of claim, a statement of the credits of the defendant known to him, and in every case shall file an affidavit stating the amount or balance verily believed to be due from the defendant, whereby, in case of judgment, liquidation shall be made. 36.

37. In actions of assumpsit, including appeals from justices of the peace or aldermen where the cause of action is of the same nature, if the case be such that the debt or damages can be liquidated without the aid of a jury, the plaintiff shall file with his statement an affidavit of claim stating the amount he verily believes to be due from the defendant, and a brief statement of the facts necessary to support his claim. Where, however, the statement made under the Procedure Act contains all the essential facts upon which the claim is based, the affidavit of claim shall be sufficient if the plaintiff, in an affidavit thereto, sets forth that the matters contained in the statement are true, and that the amount therein stated to be due is justly owing from the defendant. 41.

38. In all writs of scire facias or judgments, mortgages, liens of mechanics and materialmen, and transcripts from the Orphans' Court, the plaintiff shall file, on or before the return day of the writ, an affidavit, stating the amount he verily believes to be due from the defendant, and no judgment shall be entered



in such proceeding until an affidavit of claim is filed: Provided, that on Building and Loan Association judgments, when judgment is taken, it shall be liquidated for the amount of the penal sum, conditioned for the payment of premiums, interest, fines and attorney's commissions, as in the original obligation. 41.

39. The affidavit of claim shall specify the credits, if any, to which the defendant is entitled, and shall include a calculation showing the amount claimed to be due. 41.

40. In all actions for the recovery of money upon contracts not in writing, or upon lost instruments, if the plaintiff shall file with his narr., declaration or statement, or afterwards with the required notice, a full and detailed statement of the amount due, under oath, or of the loss and contents of the instrument, he shall be entitled to judgment, unless an affidavit of defence be filed as in other cases. 6, 30, 48.

41. In all actions of scire facias the writ shall stand as a declaration, and an affidavit of defence must be filed on or before the fifteenth day after the return day, otherwise the plaintiff may take judgment as of course in the prothonotary's office, upon præcipe, for want of an affidavit of defence. 8, 10, 12, 13, 20, 45, 51.

42. In all actions of scire facias on judgments, mortgages, liens of mechanics or materialmen, or municipal liens, or on recognizances of bail for stay of execution, or to prosecute appeals or writs of certiorari, it shall be lawful for the plaintiff, on the first Saturday of the term next after that to which the suit is brought, to enter judgment by default, notwithstanding an appearance by attorney, unless the defendant shall have previously filed an affidavit of defence, setting forth particularly the nature and character of the same, 26; Provided that in all cases no judgment shall be entered by virtue of this rule, unless the said plaintiff shall file, on or before the return day of the writ, in the office of the prothonotary, in addition to his declaration or statement (when the same is necessary), an affidavit stating the amount verily believed to be due from the defendant, and also a copy of the instrument of writing, book entries, or claim on which the action has been brought, except that no copy need be filed of mortgages, liens of mechanics or materialmen, municipal liens, judgments, recognizances or other records. In all



cases in which the plaintiff, having complied with the foregoing requirements, has failed to take judgment for want of an affidavit of defence on the day fixed, he may, at any time thereafter, enter a rule as of course in the prothonotary's office, upon the defendant to file an affidavit of defence on ten days' notice, or judgment, which rule shall be served personally on the defendant or his attorney. The prothonotary shall enter judgment upon proof by affidavit that such notice has been given. Provided that no affidavit of defence be in meantime filed. 2.

43. In all actions of scire facias upon recognizances, judgments, mortgages, mechanics' or other liens, and municipal claims, if the plaintiff shall have filed, with the præcipe, or before the return day of the writ, a full copy of the instrument upon which the suit is founded, or a reference to the office, book and page, where the same is entered or recorded, and, if any facts are necessary in additon to the record to establish his claim, or liquidate a judgment thereon, an affidavit setting forth such facts, he shall be entitled to judgment by default, unless the defendant, or some one for him, knowing the facts, shall within fifteen days after the return day of the writ, make and file an affidavit of defence, in which the nature and character of the same shall be specifically stated. 18. Provided that in actions of scire facias on judgments entered in this court, and less than twenty years past due, the plaintiff, if the præcipe specify the number and term of the judgment, need file no other paper in order to entitle him to judgment for want of an affidavit of defence. 37.

44. In writs of scire facias on judgments, mortgages, liens of mechanics or material men, municipal liens, transcripts from the Orphans' Court, and recognizances, on the Monday occurring four weeks after the writ is returnable, or on any day afterwards, the plaintiff shall be entitled to take judgment, on motion entered in the rule book, or on præcipe to the prothonotary, unless the defendant shall have filed an affidavit of defence before said Monday. 47.

45. In actions by writ of scire facias upon judgments, mortgages, liens of mechanics and material men, municipal claims, recognizances in any court, and transcripts from the Orphans' Court, if the plaintiff shall ten days before the return day of the writ file with his præcipe a reference to the place where such record or instrument may be readily found by the defend-

ant, it shall not be necessary to file a statement or affidavit, and he shall be entitled to judgment at any time after (the second Saturday from, 9) the return day of the writ, unless the defendant shall have filed an affidavit of defence setting forth fully and particularly the nature and character of his defence, 9. Provided such judgment shall not be entered until at least fifteen days after such service. 10.

46. In cases of scire facias (upon municipal liens, 48) (upon any record of this court, 13, 45) a copy or statement shall not be required, but a reference to the record shall be sufficient. In the case of a mortgage the date of the record shall be given (In scire facias sur recognizance in the Orphans' Court or Quarter Sessions, a statement in brief shall be given, 13, 45) and in said actions judgment by default may be taken as in other cases, after the return day, if the defendant shall have neglected to file an affidavit of defence on or before the return day, or within fifteen days (twenty days, 48) after the service of the writ. 2, 11, 13, 45, 48.

47. In the action of debt on an official bond, the plaintiff shall be entitled to judgment on the second Monday of the term, or on any motion day afterwards, unless an affidavit of defence has been filed. 47.

48. When the suit is brought on a book account, and the defendant files within ten days from the return day the affidavit required for the purpose of compelling plaintiff to prove the account on the trial, no other affidavit of defence need be filed. Provided that judgment may be taken if such affidavit, or an affidavit of defence, be not filed within said time. 42.

49. Whenever a cause arising ex contractu shall have been brought into court by appeal of the defendant from a justice of the peace, the plaintiff may at any time file a declaration or statement, together with a copy of the instrument of writing, book entries, record or claim on which such action has been brought; and thereupon he may demand an affidavit of defence upon giving fifteen days (fourteen days, 26, 39) (twenty days, 48) notice of such demand, to be served as in other cases; and unless the defendant shall thereupon file an affidavit, the plaintiff shall be entitled to move for judgment in the office of the prothonotary, and judgment shall be entered by the prothono-

tary in the same manner as if the suit had originally been begun in Court. 11, 13, 20, 26, 30, 39, 43, 45, 48.

50. Appeals from a justice of the peace by a defendant must be accompanied by an affidavit of defence at the time they are filed; otherwise the court will, on motion, enter judgment for the same amount as that of the justice, together with interest and cost. 16, 24.

51. When the plaintiff appeals he shall file with his transcript (or after, 10) an affidavit of his claim, and, on notice, of the same to the defendant, the defendant shall, within fifteen days thereafter file an affidavit of defence. In default thereof, on proof of service of notice, the prothonotary may, at any time after the expiration of the said fifteen days, enter judgment for the amount claimed in the plaintiff's affidavit and costs. 10, 16, 24.

52. In appeals from justices, the plaintiff shall file with or before his statement an affidavit setting forth the nature of his claim, a statement of the facts upon which he relies to recover, and the amount he believes to be due from the defendant; and unless the defendant shall within fifteen days after notice thereof, file an affidavit setting forth specifically and at length the nature and character of his defence, the plaintiff shall be entitled to judgment. 18. If the plaintiff neglects to comply with this rule judgment of non-pros. shall be entered against him by the prothonotary. 5, 14.

53. In all appeals from the judgments of justices of the peace, in suits founded on contract express or implied, the plaintiff having first filed an affidavit stating the amount, after deducting credits, he verily believes to be due from the defendant, together with a copy of the book entries or instrument upon which the suit is brought; or where the claim is not evidenced by writing, a specification and detailed statement thereof verified as aforesaid, may, at any time on or after filing the transcript, enter a rule of course upon the defendant to file an affidavit of defence to the cause of action within twenty-one days or judgment. Service of this rule shall be made upon the party, if resident in the county, by copy delivered to him, or left at his place of abode, and, if not so resident, upon his attorney. And if an affidavit of defence be not filed within the time fixed, excluding the day of service, judgment shall be

entered by the prothonotary as of course for want of an affidavit of defence. After the entry of the rule aforesaid, the defendant shall not be released or excused from filing a sufficient affidavit of defence by taking out a rule to arbitrate, unless an award in his favor shall have been obtained and filed before the expiration of the time for filing an affidavit of defence. The plaintiff shall not be entitled to the above rule when the defendant has filed an affidavit of defence before the magistrate agreeably to the provisions of the second section of the Act of July 7th, 1879, unless his counsel shall first certify in writing filed that said affidavit of defence, as well as the proofs, if any were made by defendant before the magistrate, are, in his opinion, insufficient to constitute a valid defence. 40.

54. In all cases of appeals from the judgments of justices of the peace, in actions ex contractu, the defendant or defendants shall be required to file an affidavit of defence within fifteen days after service upon him, or his attorney, of a copy of the plaintiff's statement. Provided, that where the defendant has no attorney of record, and the plaintiff shall make affidavit that his residence is out of the county, and his address not known to him, he shall be entitled to such judgment by default upon service of said notice upon his bail, if he had any, and if not then without service. If the defendant and his attorney reside out of the county, and their address is known to the plaintiff, service may be made by enclosing a copy of plaintiff's statement in a registered letter addressed to the last known place of residence of the defendant, or his attorney, and depositing the same in the post-office postpaid, and the time within which judgment may be entered by default shall be computed as of the day after the next mail in due course is delivered at the post-office of the defendant or his attorney. 6.

55. In appeals by defendant from judgments of justices of the peace founded on contracts express or implied, where the sum in controversy is less than \$100, the appellant shall within twenty days (ten days, 42) from the first day of the term to which the appeal is entered, file an affidavit setting forth the nature and character of his defence, 42, and in default thereof, the plaintiff having filed a declaration or statement, and copy of his claim, within the first week of the term, shall be entitled to a judgment for the amount of the judgment of the justice with interest

and with costs, to be entered on motion on any day thereafter on which judgments are allowed to be taken under these rules. Provided that this rule shall not extend to cases where it shall appear from the transcript that the defendant offered to confess a judgment for any part of the demand of the plaintiff. 38.

56. After an appeal has been duly entered the plaintiff may file the statement provided by the Act of May 25, 1887, and upon serving a copy of his statement as provided by said Act, may take judgment by default after fifteen days from the service of such copy, 32, unless the defendant shall have filed an affidavit of defence as in other cases, 21, and unless the judgment before the justice has been in favor of the defendant. 8, 51.

57. Judgments for want of an affidavit of defence may be entered in actions of assumpsit brought by appeal from justices of the peace, except in cases where the judgment of the justice was in favor of the defendant, but no affidavit of defence need be filed unless the plaintiff file a statement within thirty days, after the first day of the term to which the transcript is returnable, and give the defendant or his attorney notice thereof. 12.

58. In cases of appeals from justices of the peace, if the plaintiff has filed his statement on or before the first Monday of the month succeeding the first day of the term to which the appeal is returnable, and the defendant shall not on or before the first Monday of the second month succeeding the first day of the term to which the appeal is returnable, where an affidavit of defence is required, have filed his affidavit of defence, the plaintiff shall be entitled to take judgment on any day after the default, on motion entered in the rule book or on præcipe to the prothonotary. Provided the plaintiff shall have filed his statement and affidavit of claim as required by these rules. 47.

59. In all actions, except trover and conversion, the plaintiff shall be at liberty at any time after the appeal is at issue, to serve a copy of his claim upon the defendant, together with notice requiring a filing of an affidavit of defence thereto, within twenty days after such service. If no affidavit be filed the plaintiff may have judgment thereon, as in any other case. 4.

60. If the plaintiff file his declaration before, on or at any time after the return day of the writ, but less than fifteen days before, and serve a copy of the same with notice of such filing,

upon the defendant, or his attorney of record, the defendant must file an affidavit of defence within fifteen days (ten days, 42) after such filing and service, otherwise the plaintiff may take judgment as of course, in the prothonotary's office, for want of an affidavit of defence, 2, 6, 7, 12, 16, 20, 21, 23, 24, 27, 28, 30, 35, 39, 41 42, 47, 48, 51, who shall assess the damages in all cases in which the amount thereof is set forth with certainty in the statement of plaintiff, or can be rendered certain by computation. 13, 45.

61. In the action of assumpsit the plaintiff may, before the return day of the writ, serve a copy of his declaration or statement upon the defendant. If such service be made not less than fifteen days before the return day of the writ, the defendant must file an affidavit of defence on or before the return day; otherwise the plaintiff may, at any time after the return day, take judgment as of course, in the prothonotary's office for want of an affidavit of defence, 14, upon præcipe; provided he has complied in all respects with the existing rules of court applicable to the particular case, 2, 7, 20, 21, 23, 39, 47. Only one partner need be served if the intention is only to bind the partnership. 24.

62. In all other actions than assumpsit in which judgment for want of an affidavit of defence is authorized by law or by rule of court, judgment may be taken on any motion day, not less than twenty days after the return day of the writ, if the plaintiff shall have filed a statement of his claim, and shall have served a copy thereof at least fifteen days before moving for judgment, unless the defendant shall have previously filed an affidavit of defence, stating therein the nature and character of the same. 21.

63. The plaintiff having filed a statement and affidavit of claim as required by rules of court, may in all actions on express contracts for the payment of money (including sci. fas.) at any time enter a rule upon the defendant to file an affidavit of defence in fourteen days or judgment. Such rule shall be served in the same manner as a summons, either on the defendant or his attorney, where he does not reside in the county. If an affidavit be not filed within said time, and the writ have been duly served, judgment shall be entered by the prothonotary as of course. 50.

64. If the plaintiff omit to file his statement of claim or reference as aforesaid, on or before the return day of the writ, or in case of appeal on or before the first day of the term to which the appeal is entered, he may nevertheless take judgment at any time after twenty days (ten days, 42) notice to the defendant, or his attorney of record in the suit, of the filing of the same unless an affidavit of defence be filed, 33, but unless notice be given as aforesaid judgment shall not be entered. 42.

65. In case the plaintiff files an amended statement the same shall be replied to by affidavit, within fifteen days after notice, as provided for affidavits of defence to the original statement. 18.

66. No affidavit of defence shall be required on an appeal by plaintiff from a judgment of a justice of the peace or an award of arbitrators in favor of the defendant. 22.

67. The affidavit of defence shall contain a specific averment of facts necessary to constitute a good defence to the plaintiff's action. It shall state whether the defence is to the whole or a part only of the plaintiff's claim, and if only to a part, to how much thereof, 19, (and in such case the amount not defended against shall be specified as admitted to be due, 23), and judgment may be entered by the prothonotary for the amount admitted to be due, and execution allowed for the collection of the same. The case shall then be proceeded in for the recovery of the residue of plaintiff's demand. 7.

68. The affidavit of defence shall be in the first person, and shall be divided into paragraphs or sections, consecutively numbered. Each paragraph shall contain as near as may be a separate and distinct allegation. It shall state the nature and character of the defence, and whether it is to the whole or a part only of the plaintiff's claim, and if only to a part to which part. If the defence rests on matter either written or printed, a copy of such matter shall be set forth, except in case of a record. In actions against persons sued in a representative capacity, the affidavit will be sufficient if the defence is stated on information and belief. 45.

69. In all cases where an affidavit of defence is required, the same shall set out specifically what the defence is, and the defendant shall on the trial of the case be confined in his evidence to the matters specifically set out in his affidavit of defence ;



Provided, that the defendant may file a supplemental affidavit of defence at any time after issue joined and within ten days after the cause is on the trial list, of which he must give written notice to the plaintiff's attorney, together with a copy of said supplemental affidavit, within five days after the same is filed. 47.

70. Every affidavit of defence must state fully the nature and character of the defence, and set forth at large facts upon which such defence is founded, in order that the court may judge whether said facts, if proven, would constitute a good defence to the plaintiff's action. 18, 50.

71. In an affidavit of defence all facts and statements which are within affiant's knowledge shall be sworn or affirmed to be true, and all other facts and statements shall be sworn or affirmed to be true as affiant is informed and believes and expects to be able to prove on the trial of the cause. 5.

72. If there are several grounds of defence they shall be separately stated in paragraphs consecutively numbered, and each shall contain a specific averment of facts sufficient to constitute a good legal or equitable defence. 16.

73. In actions upon contracts not evidenced by writing, record or book account, and in actions upon contracts the written evidence of which is lost, a general affidavit denying liability shall be deemed sufficient, unless a statement filed by the plaintiff shall be accompanied by, or have annexed to it, a positive affidavit by the plaintiff or some one personally conversant with the facts, specifically setting forth the date and terms of such contract, a copy of which affidavit is to be served upon the defendant wherever service of the statement is required. 23.

74. The affidavit of defence shall be made by the defendant when practicable. If the affidavit is by one on behalf of all it shall so state. When the affidavit is by a person not a party to the record, the reason why it is not made by the party, and why it is made by the affiant, shall be stated, and if the reason is sufficient, it will be allowed to stand; otherwise it will be treated as a nullity. If the defendant be a corporation, the affidavit may be made by the principal officer, or any agent, or employee, having knowledge of the necessary facts. 45.

75. If the defence stated in the affidavit be to a part of the claim only, the sum not in dispute shall be specified for which



plaintiff may take judgment and have execution at once, without prejudice to the recovery of the balance in the same action, 29 (or proceed for the whole claim, 16). Provided, that in case of the plaintiff's failure to recover said balance, or any part thereof, he shall pay all costs accruing after the filing of the affidavit, except the costs of said judgment and execution, 6, 11, 16, 19, 22, 38, 39, 42, 43, 44, 50, and the same rule shall apply where the defendant tenders judgment for an admitted amount and the plaintiff refuses to accept it. 30.

76. In all cases where an affidavit of defence required by these rules shall be filed, it shall state whether the defence is to the whole, or to only a part of plaintiff's claim, and if only to a part it shall state to what part, and in such case the plaintiff may proceed to trial for his whole claim, or, at his option, take judgment for the part not denied or admitted by the defendant, which shall be final for the purpose of lien and execution, but shall not be a bar to the recovery of the residue of his claim, provided, that he shall state in his præcipe for said judgment, or shall file a paper at the time of taking such judgment, stating that he declines to accept the same in full satisfaction of his claim, and elects to proceed for the balance; otherwise he shall be barred from further proceedings, and said judgment shall be taken as final. If the plaintiff takes such judgment he may proceed for the recovery of the residue of his claim, either by rule for judgment for want of a sufficient affidavit of defence or by trial. If, however, the defence is only partial and the plaintiff shall proceed to trial for the whole, but shall fail to recover more than the amount not denied, with interest thereon, or if he shall take judgment for the amount admitted and shall proceed to trial for the balance in dispute, and shall fail to recover in addition thereto, he shall pay all costs accruing in such action in excess of the costs he might have recovered if he had taken final judgment for the amount admitted. 4, 5, 8, 9, 10, 12, 14, 17, 20, 21, 23, 24, 26, 27, 28, 33, 35, 40, 41, 45, 47, 48, 51.

77. If the defence be to a part only of the plaintiff's claim, the affidavit shall state what part and how much, specifying the items objected to, and shall contain an offer to confess judgment for the remainder, 38. The plaintiff may accept this offer and on his præcipe to this effect (wherein he shall also state whether or not he intends to proceed for the sum not admitted)

the prothonotary shall enter judgment for the sum so admitted. Unless the defendant pay into court the sum admitted the plaintiff may issue execution therefor, with directions to the sheriff to collect said sum only, with costs up to the time of judgment. As to the residue, the plaintiff may, if he has elected to proceed therefor in manner aforesaid, rule the defendant to plead, join issue and go to trial, as in other cases. If the plaintiff recover the residue, or any part thereof, he may, if before the return day of the execution for the admitted sum, order the sheriff to collect the additional sum recovered, or if after such return day he may have an alias or pluries writ as the case may require. In case of plaintiff's failure to recover any part of said residue, he shall pay all costs accruing upon the proceedings to recover the same. If the plaintiff be unwilling to accept, or refuse, he may waive judgment under the rule, and proceed to trial for the whole amount of his claim. In that event the items not objected to in the affidavit of defence shall, on the trial, be taken as admitted, but the defendant may, at any time after filing his affidavit, pay the admitted sum into court and save further costs, as in other cases, according to the rules as to paying money into court. 36.

78. An affidavit of defence (or a counter-affidavit, 17) shall be required from executors, administrators, guardians, committees and others sued in a representative capacity. Provided, that where the action of plaintiff, (or the set-off or counter claim of defendant as the case may be, 17) is not founded on some contract or act of the executor or other trustee, an affidavit by him that he has made diligent inquiry, and has not been able to obtain sufficient information to enable him to set forth particularly the nature and character of the defence, but that he believes there is a just and legal defence, (to the whole or part of plaintiff's claim, 9) shall be deemed a sufficient compliance with this rule. 1, 8, 9, 17, 26, 30.

79. No affidavit of defence (or answer, 18) shall be required in any action brought against executors, administrators, or others sued in a representative capacity, 2, 10, 20, 34, 38, 44, if they shall suggest under oath that the cause of action and the defence thereto arose in the lifetime of the decedent, or prior to their appointment, 5, 13, 35, 45, (and deny knowledge of the facts sufficient to enable them to set forth the same, 18)

nor shall such affidavit be required from an infant, or municipal or quasi-municipal corporation. 22, 36, 47, 50.

80. No affidavit of defence shall be required in actions of trespass. 16, 24.

81. A copy of the affidavit of defence, duly endorsed, must be served on the plaintiff or his counsel within five days (forty-eight hours, 1, 23) after the filing thereof, 1, 26, 32, if intended to serve any purpose in connection with the evidence to be produced on the trial. 23.

82. Defendant having filed an answer under the rule relating to admissions, or an affidavit of defence, consisting in whole or in part of a set-off or counter claim for which, if plaintiff, he could take a judgment for want of an affidavit of defence, such set-off or counter claim exceeding the amount of the claim of the plaintiff, and having made the proper affidavit thereto, and having served a copy of such affidavit of defence or answer upon the plaintiff, or his attorney of record, unless such service shall be waived, shall be entitled fifteen days after such service, or waiver thereof, to a judgment against the plaintiff for the difference between the amount of such set-off or counter claim and the claim of the plaintiff, unless the plaintiff shall have filed an affidavit setting up a good and sufficient defence to such set-off or counter claim. Such judgment may be entered by default of course in the prothonotary's office, or by leave of court for want of a sufficient affidavit, and having been so entered the defendant shall have execution therefor, and the parties shall thereupon proceed to trial for the balance of their respective claims in dispute. 17.

83. In all actions of assumpsit brought against executors, administrators or others, acting in a representative capacity, the court, or judge in vacation, may, upon motion of the defendant, founded upon affidavit, that he has not information sufficient to enable him to make the affidavit of defence, extend the time within which such affidavit shall be filed. 7.

84. The court, or a judge thereof at chambers, may enlarge the time for filing affidavits of defence to suit the exigencies of the case. 6, 16, 30, 37, 48.

85. The judgments authorized to be taken under any Act of Assembly for want of an affidavit of defence, may be moved before, and entered by the prothonotary, 32, who shall (at

once, 7) assess the damages in all cases where the amount thereof is set forth with certainty in the plaintiff's statement, 8, 19, 38. Provided that when there is an appearance no such judgment shall be entered without notice to the attorney of record. 7.

86. The motion or præcipe for judgment shall set forth all the facts and dates as to the filing and service of statements, copies and notices, that are requisite to show the plaintiff's present right to judgment. 23.

87. Where judgment is taken for want of an affidavit of defence, and the same is not authorized by these rules, the court will, on motion, strike off the judgment so entered, 28, 33, 35, upon affidavit being made that the defendant has a just defence to the action upon the merits. 27.

88. Before a rule for judgment is entered, the party may file an amendment to his affidavit, or a new affidavit of course; but subsequent to the entering of the rule a new or amended affidavit will not be allowed without leave of the court. 18.

89. Where an affidavit is filed and the same is defective in matter of substance, the court, on motion, or after hearing on rule granted, will enter judgment for the plaintiff for want of a sufficient affidavit of defence, reserving the right to receive supplemental affidavits when necessary to prevent injustice. 9, 27, 28, 33, 35, 41, 47, 48.

90. A rule to show cause why judgment should not be entered for want of a sufficient affidavit of defence (or counter affidavit of plaintiff, 17) shall be of course, 25, 46, 49, and must be put on the argument list forthwith, 6, 7, 10, 16, 29, 38, 40, 41, (unless otherwise specially ordered, 32) Provided that the defendant shall have ten days' notice (five days, 5) (such notice as the court shall direct, 24) of the rule before argument, 5, 24, 37, or the court upon notice to the opposing counsel of record may enter judgment upon motion when the affidavit is clearly insufficient. 17, 18, 23, 30, 50.

91. When the plaintiff deems the affidavit of defence filed in any case insufficient, he shall be at liberty at any time after the filing thereof, (and before any further proceedings in the cause, 19), to enter in the prothonotary's office a motion for judgment for want of a sufficient affidavit of defence, 8, 14, 21, and to set down said motion for argument (at any succeeding argument

court, 9) in the argument watch book, ten days' notice (seven days, 42) in writing to be given the defendant or his counsel of record before the Argument Court. 16, 19, 42.

92. In all cases of a rule to show cause why judgment should not be entered for want of a sufficient affidavit of defence the plaintiff when taking the rule, shall assign and specify in writing wherein the affidavit of defence is insufficient, 5, 10, 16, 40, and judgment shall not be rendered for any defect in the affidavit which has not been so specified. 2, 14, 15, 20, 36, 39, 45.

93. Upon exceptions filed, a rule shall be granted to show cause why judgment shall not be entered for want of a sufficient affidavit of defence, 22, which rule, unless otherwise ordered, shall be returnable with fifteen days, upon ten days' notice to the defendant, his agent or attorney; and if upon argument the affidavit is found insufficient, the court may permit a supplemental affidavit or direct judgment for the plaintiff. 11.

94. The plaintiff shall serve a copy of said rule and specifications upon the defendant or his attorney, who may amend his affidavit of defence (within ten days after such service, 15) before the hearing of the rule for judgment, 10, 14, 40, 42. If the plaintiff deems such amended affidavit sufficient he may withdraw said rule for judgment; otherwise the same shall be heard (at such time and upon such notice as the court shall direct, 15) (upon ten days' notice, 2). After argument no amendment or supplemental affidavit will be allowed, 15, unless by leave of court. 2, 5, 16, 20, 36, 39.

95. [Rules for judgment for want of a sufficient affidavit of defence are heard at varying times in the several districts] but in hearing arguments on such rules precedence shall always be given to the cases in which affidavits of defence have been filed to the then pending term of court. 2.

96. The plaintiff shall not be deemed to have waived his right to judgment for want of an affidavit of defence by reason of his having entered a rule to plead. Nor shall a rule of reference, or any proceedings under it, be considered as such a waiver, unless, before the time for filing an affidavit of defence has expired, an award in the suit shall have been filed in favor of the defendant. 14, 27, 28, 33, 35, 40, 41, 47.

97. The entry of a rule of compulsory arbitration, under

Act of June 16, 1836, shall not prevent the plaintiff from taking judgment under this rule of court, at any time prior to the day fixed for the choice of arbitrators, nor at any time after said day shall have passed without such choice, nor at any time after the day fixed for the meeting of arbitrators shall have passed without meeting or adjournment, nor at any time after an appeal from the award. 11, 43.

98. The affidavit made in appealing from an award of arbitrators where the rule of reference is entered by the defendant, shall not be treated as dispensing with an affidavit of defence. If, however, the rule to refer be entered by the plaintiff, the defendant's affidavit on appeal shall be treated as a sufficient affidavit of defence. 24.

99. When a case has been ruled out on arbitration by the plaintiff, and he would otherwise be entitled to an affidavit of defence, he shall not be entitled to a judgment for want of the same under these rules, until after the cause has been brought back into court by appeal or otherwise, in which case he shall be entitled to judgment, unless the defendant shall file an affidavit within fifteen days after demand therefor by the plaintiff, and service of such demand as in other cases. 13, 45.

100. When a cause has been ruled out on arbitration by the defendant, and brought back into court by appeal or otherwise, and the defendant shall not file an affidavit of defence, the plaintiff shall be entitled to judgment for want of such affidavit, as in other cases under these rules. 13, 45.

#### AGREEMENTS

101. All agreements of (parties or, 23) attorneys, touching the business of the court (or any matter before or to be brought before the court, 23) shall be in writing, 3, 51, otherwise (in case of dispute, 24) they shall be considered of no validity, 1, 2, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, except when made in open court respecting some matter then before the court. 6, 17, 18, 30, 37, 48.

102. Agreements, not so evidenced and filed, or produced, will be wholly disregarded, and no question or discussion, as to their existence or non-existence, will be permitted under any circumstances. 23.

**AMENDMENTS**

[See also, §§ 588, 637, 883 and 1045]

103. Before the defendant pleads (At any time 20 days before trial, 10), the plaintiff may amend his declaration, add new counts, or withdraw it, and file a new one of course; and so the defendant may amend, add, withdraw or change his plea before replication. 10. And so after issue joined either party may amend, add, alter or withdraw, upon giving notice thereof immediately to the opposite party, 28, 33, 35, to enable him to frame his pleadings, and prepare for trial accordingly. 9, 14, 27, 41.

104. (Except in cases otherwise regulated by law, 18, 37) if an amendment be made after a cause be put down for trial, or at bar (other than formal joining of issue, 19), the opposite party may move to postpone on the ground of surprise; but the court may require the reasons for the postponement to be stated and supported by affidavit (but the party moving to amend must pay the costs of the term, 2, 4, 22, 30, 46, 49), and may make such order as to continuance and costs as shall be considered just. 9, 14, 18, 19, 20, 25, 27, 28, 33, 35, 36, 37, 41, 47.

105. When an amendment is offered to be made on the trial, leave to amend will not be given unless the motion is supported by an affidavit that the amendment will affect the merits of the case, and that leave to amend is not desired for any other reason. 16.

106. If by an amendment allowed at the trial a party is surprised, he shall allege the surprise in an affidavit, and also that the amendment affects the merits of the case, and that he is not prepared for trial by reason of the amendment made. 16.

107. After a cause shall have been put on the list for trial, no amendment to any part of the pleadings shall be allowed except on (ten days, 48) notice to the opposite party and sufficient cause shown, and on such terms as the court may deem just. 6, 10, 17, 37, 50. Amendments on the trial shall only be allowed on similar terms. 5.

108. In all cases the party moving to amend during the trial of a cause, shall put the substance of his amendment in writing and file the same; which, if allowed, shall enable him

afterwards, if required by the adverse party, to draw the same out at length 14, 17, 27, 36, 50.

109. Pleadings, bills of particulars, affidavits, etc., may be altered, amended and withdrawn, by leave of court given on such terms as justice may require. 16, 30, 33, 39, 42, 45.

110. Amendments of the pleadings as to facts shall be verified by affidavit, and a copy thereof shall be served on the adverse party within five days after the same have been allowed. Experimental answers will not be favored. 3.

111. All motions to amend shall be reduced to writing (except in cases of short pleas and replications entered on the record, 36) and shall be accompanied by a statement of the reasons therefor, signed by a party or his attorney. 4.

112. Whenever an amendment to a declaration is made in vacation, notice thereof shall be given to the opposite party (five days thereafter, 38) ten days previous to the first day of the term at which the cause is set down for trial, or of the term next after such amendment. 7.

#### APPEALS

[See also §§ 6-10, 33, 34, 36, 37, 50-59, 64, 66, 100, 204, 211, 425, 567, 594, 601, 654, 1058, 1136, 1511-1521, and 1854-1856.]

113. When bail for an appeal from the judgment of a justice of the peace has been entered, it shall be competent for the appellee to file a transcript of the record of the justice in the prothonotary's office, with the same effect as if filed by the appellant. 27.

114. The appellant shall within five days after entering his appeal cause a written notice of the fact to be served on the opposite party, which notice may be served by the appellant, or by a messenger, or by a registered letter. A copy of the notice, with an affidavit of the service by the person making it, and if made by registered letter the receipt of the appellee for the letter, in addition to the affidavit, filed in the case, shall be held to be effectual to bring the appellee into court. 26.

115. In all cases of appeal by the plaintiff from such a judgment, he shall serve a written notice of the appeal upon the defendant, stating the court, term and number of the suit, and file proof of such service (before proceeding further, 13) (at least



ten days before taking a judgment by default, 1) at least five days before taking any further step in the cause. 23.

116. A motion to dismiss any appeal must be made at the term to which the appeal is entered. Provided that if an appeal be taken within twenty days next preceding any regular term, the motion may be made on the motion day next following such term. 22.

117. When there is no recognizance of bail returned with or noted on the transcript, or it is informal or illegal, or where the bail is insufficient, the appellee having done no act in the cause after the filing of the appeal, within ten days after the first day of the term or return day (during (the first week of, 36) the term, 36, 42) to which the appeal is filed, may file exceptions specifying the defect, informality, illegality, or insufficiency of the bail, and the appellant, within ten days after notice to himself or attorney, shall perfect the recognizance, or justify the bail, or put in new bail in open court, or before a judge or the prothonotary, giving the appellee or his attorney one day's notice (by written citation 36) of the time and place of so doing; in default the appeal will be dismissed or quashed, 9, 10, 16, 17, 28, 33, 35, 41, 42, 50, if defective in manner aforesaid. But if exceptions be not filed, or if the appellee declare or plead without exception as aforesaid, no motion to quash will thereafter be entertained. 36.

118. Every application for the allowance of an appeal in cases of summary conviction, or of judgment in a suit for a penalty before a magistrate or court not of record, shall be by petition accompanied by a copy of the record; the petition shall specify in detail the grounds on which the application is based, and reasonable notice of the application shall be given to the adverse party, in default of which the appeal shall not be allowed in the first instance, but a rule to show cause will be granted if the petition sets forth a prima facie case for relief. 3.

119. In applications for an allowance of an appeal from the judgment of a magistrate, or a court not of record, in a suit for a penalty, the party desiring to appeal shall set out with precision the reasons why the judgment should not be sustained, which, when allowed by a judge, shall stand as the exceptions in the case before the court. 47.

120. The party taking the appeal may suggest a diminution

of the record, as is provided in case of a certiorari, or have a rule, as in case of a certiorari, if the proceedings of the magistrate be not returned to the first day of the term following the allowance of the appeal by the judge. 47.

121. In all cases of an appeal to the common pleas in a suit for a penalty, the appeal shall be placed on the argument list, and unless the evidence returned is so conflicting that the court desires an issue of fact to be determined by the jury, the case shall be determined by the court upon the record as returned in the nature of a certiorari, and the judgment of the magistrate be affirmed or reversed as the court may determine. 47.

122. If the court desire an issue of fact to be determined by a jury, the court shall direct the issue to be put upon the trial list at the next term, to be tried as though the plaintiff had declared upon an ordinance or statute, and the defendant had pleaded nil debit, and the cause shall be tried without other or further pleading. 47.

123. In all appeals from judgments for penalties, under the Act of 17th April, 1876 (P. L., 29), the bail required shall be bail absolute in double the amount of the penalty imposed, and the costs accrued and likely to accrue 2.

124. Persons dissatisfied with the final classification and amount of the license fee fixed by the mercantile appraiser, may appeal to the Court of Common Pleas, by filing with the prothonotary a copy of the appraisement and classification appealed from, with an affidavit that the appellant verily believes that injustice has been done him by the final assessment and classification made by the said appraiser, whereupon the prothonotary shall cause said appeal to be placed on the argument list for the next session of the court. The person appealing shall file the said appeal within ten days after notice of the final disposition of the case by the appraiser. The appellant shall also cause a written notice of said appeal to be served upon the appraiser and county commissioners. The case may then be set down for hearing on the next argument list. 32.

#### APPEARANCES

[See also §§ 5, 292, 870, and 1127-1137.]

125. No attorney shall enter an appearance for either party to a suit, action or judgment, without authority so to do under

a general or special retainer, and no appearance shall be entered except by *præcipe* filed. 43.

126. Every attorney when employed either for the plaintiff or defendant shall have his name marked of record in the suit accordingly, otherwise he will not be heard in relation to the suit, 10, 16, 17, 20, 24, 28, 30, 33, 35, 37, 46, 47, 48, 49, 50, (unless by permission of the court, 18). Provided that this rule shall not apply to non-resident counsel who may be employed to assist in the trial of any case. 20, 25, 46, 49.

127. Appearance by an attorney to an action shall be by *præcipe*, which shall be dated and filed; the *præcipe* shall be regarded as a declaration by the attorney that he has authority to appear by virtue of a retainer, either general or special. 3.

128. All appearances by an attorney to an action pending shall be by writing filed, or by entry at large on the rule book. 4.

129. The appearance of the defendant, either in person or by attorney, shall be by paper filed and noted on the docket, or by the signature of the party or his attorney on the docket, and the date thereof noted by the prothonotary. 6, 9, 10, 33.

130. Appearances shall be entered by a written order filed and endorsed by the prothonotary with the time of filing the same, 1, 15, and noted on the record. 8. But an appearance by attorney to an action at law may be by him entered on the margin of the record as heretofore 16, 23, 28, 35, 39, 41, 48.

131. Where there are several plaintiffs or defendants, an appearance will be deemed general unless expressly restricted. 16, 23, 39.

132. No appearance *de bene esse* shall be allowed, 1, 3, 8, (except by leave of the court previously had or allowed *nunc pro tunc*, 6), but every appearance, with or without qualification, shall be deemed an unconditional appearance. 28, 33, 35.

133. An appearance by a non-resident attorney in a suit at law, or in equity, shall not be permitted by the prothonotary, nor shall his *præcipe* be regarded, unless, in either case, a resident attorney be joined with him. 14, 27.

134. No party or his attorney shall file any affidavit of defence, declaration, statement or plea, or enter any rule, or any rule of reference, until he has entered his appearance in person or by attorney. 6, 9, 28, 33, 35, 41, 48.

135. When a *præcipe* is filed, signed by an attorney as

such, it shall be deemed an appearance by such attorney for the party, and the attorney's name shall be so entered by the prothonotary. 6, 9, 28, 33, 35, 41, 48.

136. Where the defendant has given bail in the cause, or made deposit in lieu thereof (is in custody under the writ, 36, 39) (or has filed an affidavit of defence, 23), he shall be deemed to have appeared in court at the return day, and if no appearance has been entered on the record, the plaintiff may nevertheless proceed by rule to plead, etc., as in other cases, 23, 36, and take judgment for want of a plea. 39.

137. In every action of replevin, if the defendant does not appear at the return day of the writ, and he has been duly summoned, the plaintiff having filed his declaration, may file a common appearance for the defendant, and proceed in the cause by ruling him to plead as in other cases. 1, 8, 15, 23, 26, 39. And upon proof that the defendant has removed from the county, or cannot be found, and that in consequence he cannot be served with the rule, the plaintiff may have judgment on motion in open court. 23.

138. It shall be the duty of the prothonotary to transfer from the files or the rule book, as the case may be, the names of the attorneys so appearing, to the margin of the appearance docket entries in the case. 4.

139. An attorney's name can only be withdrawn from the record by leave of the court, 18, and upon consent of or notice to his client. 6, 17, 28, 30, 37, 48, 50.

#### ARBITRATIONS AND AWARDS

[See also §§ 97-100, 654 and 1856]

140. If a judgment has been opened to let the defendant into a defence, neither party may arbitrate the cause without leave of the court, or the consent in writing of the opposite party. 8, 12, 20, 29, 51.

141. Rules to arbitrate that have not been proceeded in, and have become inoperative, shall be stricken off by the prothonotary at the request of either party, and at the cost of the party entering the rule. 4.

142. In all cases where a rule has been entered to arbitrate a cause, and the day to choose arbitrators has gone by without

a choice ; or where arbitrators have been appointed and the day of meeting has gone by without any meeting, or agreement to adjourn or meet on any subsequent day, such rule may be stricken off by the prothonotary at the instance of either party, and at the cost of the party in whose behalf the rule was entered. 5, 6, 7, 8, 9, 10, 11, 12, 13, 18, 19, 20, 21, 23, 24, 25, 26, 29, 30, 32, 33, 34, 37, 38, 39, 40, 42, 44, 45, 46, 47, 48, 49, 50, 51 (Provided an affidavit of the fact be first filed of record, 22), unless the parties otherwise agree in writing. 14, 15, 16, 17, 27, 28, 35, 36, 41. [In the 5th, 10th, 15th, 16th, 27th, 32nd, 36th, 39th, 40th and 42d Districts the rule only applies to a failure to choose at the appointed time.]

143. If at the time of choosing arbitrators the parties fail to agree upon the place for the trial, the prothonotary shall fix the same at the court house at the county seat. 48.

144. Notice of the filing of awards of arbitrators shall be given to the attorney of the opposite party, if there is one of record, 17, 25, 50, or to the party himself in cases where the award is filed more than seven days after its rendition. 21.

145. When a party petitions to be allowed to appeal without payment of costs, under Section 28 of the Arbitration Act of 1836, the opposite party (may traverse such petition under oath and either party may call witnesses to be examined orally, 20), may cross-examine the petitioner, and bring proof to contradict the facts stated in the petition. 8, 9, 12, 14, 36, 41, 51.

146. Exceptions to an award of arbitrators (under either an amicable or compulsory proceeding, 6, 30, 33, 37, 48, 50) must be filed within twenty days, (four days, 23, 24, 34, 40), (ten days, 8, 10, 12, 20, 25, 26, 46, 49, 51). (fifteen days, 21), after the award is filed and entered on the docket, 12, 13, 15, 17, 19, 21, 28, 30, 35, 36, 37, 39, 45, 48, (and notice to him or his attorney, 8, 10, 51) (if the same is filed within ten days after its rendition, and if not then within ten days after notice thereof on the party or his counsel, or after the first day of the next term after the same is filed, 6, 30, 37, 48), and must be accompanied by an affidavit as to facts not appearing on the face of the proceedings, 4, 7, 10, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25, 26, 28, 29, 32, 33, 34, 35, 36, 38, 39, 40, 42, 44, 45, 46, 49, 50, and shall specifically point out the matter relied upon to invalidate the award, or the substance of the evidence upon

which the mistake of fact or law is claimed to have been made. 23.

147. When either party desires to except to an award of arbitrators, the exception must be filed within twenty days from the filing of the award, and must be accompanied by an affidavit as to facts not appearing upon the face of the proceedings. 5, 9, 27, 41.

148. If exceptions are not filed (and no appeal lies, 23) the prothonotary shall enter judgment of course. 23, 26.

149. If bail be entered for an appeal from an award within the twenty days allowed by the Act of Assembly, the appellee may within ten days (four days, 7, 16, 19, 36, 38, 39, 42) (fifteen days, 14, 21), (twenty days, 27), (thirty days after entry, 4) after the time allowed for an appeal, give notice in writing to the appellant or his attorney that he excepts to the sufficiency of the bail; whereupon the appellant shall within ten days (seven days, 39), (eight days, 7, 15, 16, 19, 32, 38, 42), (fifteen days, 14, 21), (twenty days, 27), after said notice, justify the bail in open court, or before a judge thereof (or the prothonotary, 5, 6, 8, 12) or put in other sufficient bail, giving to the appellee or his attorney twenty-four hours (two days, 7, 14, 15, 16, 19, 32, 38, 39, 42) notice in writing of the time and place of justifying or putting in new bail; in default whereof the bail shall be deemed insufficient and the appeal dismissed, 4, 5, 6, 8, 9, 10, 12, 14, 15, 16, 17, 19, 21, 27, 28, 29, 30, 33, 35, 36, 37, 39, 40, 41, 42, 48, 50, 51, unless the appellant shall within (twenty-four hours, 7, 38) (forthwith, 32), enter other or additional bail, to the satisfaction of the said court, judge or prothonotary. 7, 32, 38.

### ARGUMENTS

[See also §§ 14, 95, 400-402, 653, 832, 997, 998, 1500, 1743, and 1868-1882.]

150. [Each county has its own time for holding argument courts, of value only to itself. They will be found stated fully in Reeves' Office Diary.]

151. Regular argument courts will be appointed from time to time. In making up the lists for these courts, the date and nature of the motion, rule, exceptions, or as the case may be,

shall be set forth. The purpose of these courts is to clear up the argument lists, and stale rules, and the like, will be dismissed summarily, unless cause be shown to the contrary. 3.

152. All motions made in term time, and not disposed of during the term, shall be placed upon the argument list for the next argument court. 4.

153. Motions and rules requiring the further action of the court, shall be immediately placed by the prothonotary on the argument list for the next argument court, 14, 29 (unless otherwise specially ordered, 36, 37), to be held ten days (fifteen days, 9) after the time they are granted or taken, 9, 10, 16, 24, 30, giving the date and distinctly stating the substance and object thereof. 37.

154. It shall be the duty of the prothonotary, at the close of each term of court, to make out a list of all undisposed of motions, and to post the same conspicuously in his office, and to place the same upon the argument list for the next meeting of the court. 4.

155. All causes intended for argument, at any regular term, or adjourned session of the court, shall be set down by either party at least ten days prior to the said term or time, 40, in a book to be kept by the prothonotary for that purpose, 39, noting the time and the party by whom they are so entered, from which the prothonotary shall make out an argument list for the use of the court, 17, 50, giving the number and term of the cases, and the date and character of the issues or questions presented; on which list shall also be placed by the prothonotary all rules made returnable, assigned or adjourned for hearing at that term, or meeting of the court, by special order. 6, 30, 37.

156. The prothonotary shall make out a list of the causes to be argued at the next argument court at least ten days before that time, 20, 25, 28, 23, 35, 36, 41, 43, 46, 48, 49, 50 (two weeks, 32, 42, 47) (fifteen days, 7, 38, 41) (twenty-five days, 11, 45) (on or before the second Saturday preceding, 2) (within five days after the adjournment of the regular term of court, 27) (but this rule shall not apply to rules and exceptions pending in matters relating to the distribution of moneys, 2) and no previous notice shall be necessary to bring on the argument of a case on the list, nor of any question arising during the term. 42.

157. Any case may be placed on the argument list, and

shall be heard in its place (by leave of court, 23) provided (two days, 32) (five days, 7, 12, 20, 27, 38) (six days, 10) (ten days, 11, 25, 45, 51) (fourteen days, 39) notice thereof, prior to the day when the same shall be set down for argument, shall have been given to the opposite counsel. 7, 10, 11, 12, 20, 25, 27, 32, 38, 39, 45, 51.

158. An argument list shall be made out by the prothonotary for each term of court, the cases therein being placed in the following order [varying in the different districts], except when witnesses are to be heard, after which other cases shall be heard in the order of priority (seniority of term and number, 28, 35, 36) in which the rules shall have been granted :

Motions for New Trials, 8, 11, 12, 13, 17, 22, 24, 25, 26, 27, 28, 29, 33, 34, 35, 36, 37, 39, 44, 47, 50, 51.

Motions in Arrest of Judgment, 8, 11, 12, 13, 17, 22, 24, 25, 26, 28, 29, 33, 35, 36, 39, 44, 47, 50, 51.

Exceptions to Reports of Referees and Auditors, 11.

Petitions for the Benefit of the Insolvent Laws, 15, 32.

Proceedings under Landlord and Tenant Acts, 15, 32.

Other cases that require festinum remedium, 15, 27, 32.

Motions for Judgments on Points Reserved, 17, 28, 33, 35, 36.

Exceptions under Act of 1874 waiving a Trial by Jury, 17.

Exceptions to Depositions, 17, 50.

Demurrers, 33.

Motions for Judgments on Special Verdicts, 28, 33, 35, 36.

Cases Stated, 28, 33, 35, 36.

Certioraris, 28, 32, 33, 35, 36, 45.

Cases involving the Distribution of Money, 8, 12, 25, 27, 29, 37, 39, 51.

Road Cases shall always be last, 22.

But this rule shall only apply when the court may not have sufficient time to dispose of all the cases on the list. 27

159. The prothonotary shall place all cases on the argument list, according to seniority of motion, 20, except that cases involving the distribution of money in court, or in the hands of assignees, trustees or officers of the court, shall have preference. 7, 19.

160. Ten days' notice, preceding the first day upon which the list is to be taken up, of the ordering of a cause or



matter for argument on the general list, must be given to the attorney of record of the opposing party, or if the latter have no attorney then to the opposing party himself, but no notice is required where the cause has been ordered upon the list by the court, or a judge thereof, other than that which may by it or him be directed to be given; nor is any notice demandable of the placing upon the judgment list of a rule for judgment for want of a sufficient affidavit of defence. 23.

161. All motions, rules and cases for argument shall be printed (in the legal newspaper, 19) (one week, 15) (ten days, 20) (three weeks, 19) before the argument, at the county's expense, for the use of the court and bar, 15, 19, and the cost thereof shall afterwards be taxed as costs in the case. 20.

162. The prothonotary shall furnish a copy of the list of cases set for argument to two newspapers; one at the county seat and one at the principal town, for publication, ten days prior to the argument court. He shall also furnish to each resident member of the bar, at least six days before the argument court, a printed list, in pamphlet form, of all causes set down for argument, for which he shall be allowed seventy-five cents for each cause on the list, to cover the cost of the same, to be paid by the county, as provided by law. 47.

163. The argument list so prepared shall be sufficient notice of the intended argument of any case, 9, 28, 33, 35, 39, unless the opposite party have no attorney, in which case he shall have ten days previous written notice, if resident in the county, 5, 10, 14, 16, 41, and if not resident therein a previous written notice for thirty days (twenty days, 40) put up in the prothonotary's office shall be sufficient. 18, 36, 40.

164. On the Saturdays of each week shall be heard the motions and rules on the current (and deferred motion) lists. 1, 5, 10.

165. Cases on the current motion list not answered to, shall be placed of course, without further order, on the deferred motion list of the following week. Cases on the deferred motion list not answered to, shall be placed of course, without further order, on the general motion list. 1.

166. On the third calling of the general motion and argument lists, all cases not answered to shall be finally disposed of; that is to say, demurrers, motions in arrest of judgment and

exceptions shall be stricken from the list ; motions for rules for new trials, to take off non-suits, rules for new trials and reserved points, shall be considered as submitted without argument, and decided upon the report of the judge before whom the case may have been tried. Rules for judgments, and all other rules nisi, shall be discharged. 1.

167. The court will sit for hearing arguments on Monday of each week, except during the months of July and August, and on such other days as may be specially fixed for the hearing of particular causes. The cases to be argued shall be those fixed either by the order of the court, and upon twenty-four hours' notice to the other side, or by the agreement of counsel concerned. 21.

168. All cases in which witnesses are called shall be ready for hearing on Tuesday morning of each week of argument court, unless otherwise fixed by the court or agreement of parties. Other cases upon the list may be called for argument at any time after ten days entry on the argument book. 17.

169. No argument shall be heard in any case not appearing upon the argument list, unless by leave of the court and the consent of all parties in interest, 10, 20, 39, except on questions arising during the term, 29, and on motions for judgment for want of a sufficient affidavit of defence. 8, 12, 16, 25, 46, 47, 49, 51.

170. The absence of counsel at the time a cause is called for argument shall be no reason for suspending or delaying the argument, or not proceeding therein, unless legal cause for such absence be shown to the court. 2, 23.

171. All matters upon the argument list shall be taken up in the order in which they occur on the list, and argued, unless continued by consent of counsel, or by special order of the court upon sufficient cause shown. 16, 19, 20, 37.

172. If neither party is ready when a case is called it shall be placed at the foot of the list, and not taken up until all the other cases have been called in their order. 19, 37.

173. No cause on either argument list may be continued by the parties more than twice (three times, 8, 25, 29), unless by consent of the court upon special grounds shown (but the rule on application will be dismissed, 8, 25, 29), but upon the second continuance will be stricken from the list and the rule or

motion dismissed. Cases continued either by the parties or by the court, will be put upon the next regular list without further order, unless they are continued to a particular day. Cases not responded to, unless continued by the court, will be dropped from the list. 12.

174. In all arguments on the reports of referees, or writs of certiorari, or motions for a new trial, or in arrest of judgment, the party taking the exceptions or making the motion, shall furnish the court with a copy of the exceptions, or the reasons for a new trial, or in arrest of judgment, ten days previous to the argument. 19.

175. Briefs of argument, either typewritten or in long hand, upon the law or the facts, or upon either, as counsel may think expedient, must be presented after any argument either at law or in equity, which is addressed to the court alone, except when such argument is made in the course of a trial before a jury. 12.

176. In all cases upon the motion and argument lists the party who is entitled to begin and conclude (each party, 5, 7, 10, 11, 13, 14, 15, 16, 27, 28, 35, 36, 38, 39, 42, 45, 50) shall furnish to each of the judges (previous to the argument, 7) a paper book, 23, containing a full and distinct statement of all the facts conducive to a ready apprehension of the matter to be argued, 1, 5, 6, 7, 11, 13, 15, 16, 27, 28, 34, 35, 36, 37, 38, 39, 44, 45, 48, 50 (and the points proposed to be discussed, 10, 14, 32, 33, 42). Supplemental briefs may be filed upon notice to opposing counsel. 27.

177. Paper books shall be either written in a plain legible hand, on one side of the paper, or printed, and endorsed with the names of the plaintiff and defendant, or petitioner, as the case may be, and also the names of the counsel furnishing the paper book. 3, 23. When the paper book is made of a press copy the same shall be backed with foolscap paper, and the copy trimmed to correspond in size. 1.

178. Paper books shall contain a concise statement of the points relied on; under each point shall be stated the authorities in its support; and when facts are disputed each fact shall be stated separately with a reference to the pages of the testimony bearing upon it. 3.

179. Upon a rule for a new trial, in arrest of judgment, or to take off a non-suit, the paper book shall contain (1) the names of the parties as they stood on the record, and the form of action; (2) a concise history of the case showing the matters needful in order to a ready apprehension of the question to be argued; (3) a copy of the reasons filed in support of the application; and (4) a brief of argument. 1, 23.

180. Upon a case stated the paper book shall contain (1) the names of the parties; (2) a copy of the case as filed; and (3) a brief of argument. 23.

181. Upon a rule for judgment for want of a sufficient affidavit of defence, the paper book shall contain (1) the names of the parties; (2) copies of the statement, and of the instrument in suit, book accounts sued upon, or other cause of action; (3) a copy of the affidavit or affidavits of defence filed; and (4) a brief of the argument. 1, 23.

182. Upon exceptions to the report of an auditor, commissioner, referee, or of road viewers the paper book shall contain (1) the names of the parties excepting, the nature of their interest and how it arises; (2) a copy of the report, 1; (3) a statement, if necessary, of the case, showing the matters in dispute; (4) a copy of the exceptions filed; and (5) a brief of the argument. 1, 23.

183. Upon certiorari to the judgment of an alderman or justice of the peace, the paper book shall contain, (1) an exact copy of the transcript; (2) a copy of the exceptions filed; and (3) a brief of the argument. 23. •

184. Upon rules to set aside sheriff's sales the paper book must be furnished by the party obtaining the rule, and must set forth the price for which the premises sold, the value thereof as resulting from a fair construction of the depositions and the particulars of misdescription or other irregularity. 1.

185. In every other case the paper book shall contain, analogously to the requirements in enumerated cases, a statement in orderly sequence and appropriate divisions, of the parties, the subject-matter in controversy, the facts conducive to a ready apprehension of the precise questions at issue, with copies of the petitions, orders and exceptions that are material, and a brief of argument. 23.

186. In the brief of argument it is essential that the names

of the cases cited be given, together with the book and page at which the report of the case begins, and that, in every instance, the principle announced by the decision or text-book referred to be stated, if possible in the language of the same, noting the page at which it occurs; a naked reference to a book or case will not be sufficient. Cases reported in the State Reports must be so cited, and not by reference to an unofficial report in which they may also appear. 23.

187. In no case will the court receive written without oral argument. 23.

188. In all cases the remarks of counsel must be pertinent, and confined to the evidence or matter before the court. 8, 9, 12, 16, 28, 33, 35, 41, 46, 49.

189. Upon rules to show cause of action, or to dissolve (foreign) attachments the party who is to show cause is to begin and conclude; in all other cases the party who obtains the rule to show cause, or who holds the affirmative of the issue, is to begin and conclude, 1, 5, 6, 8, 9, 10, 11, 12, 14, 15, 18, 20, 21, 22, 23, 25, 26, 27, 29, 30, 32, 34, 36, 37, 39, 41, 42, 43, 44, 45, 46, 48, 49, 51, except that in argument on reserved points the counsel who presented the points to the court, and in a motion in arrest of judgment, or for a new trial, the counsel of the party making the motion shall begin and conclude. 16, 19, 24, 28, 33, 47.

190. In all arguments on rules to show cause, exceptions, etc., the counsel having the burden of proof shall state all the points both of fact or law upon which he relies, and submit his authorities. After being replied to by opposing counsel, he shall have the conclusion, but shall be confined to answering the argument of the opposing counsel, 43, and if other points are made or authorities cited the opposite party shall have the right to reply thereto. 22.

191. Unless otherwise specially directed, two counsel, but not more, may be heard on each side of a cause or matter on the argument lists, 23 (and one counsel on each side in a case on the motion lists, 1). The counsel of the party having, according to the practice of the court, the right to begin shall state the grounds relied upon, and cite all the authorities intended to be adduced in their support. The counsel of the opposite party shall then be fully heard; if two, they shall

follow each other in order of seniority. The counsel who began, if alone, shall reply ; if two are concerned on that side, this duty shall devolve upon his colleague. The reply is to be confined to an examination of the points made by the opposite counsel. 1, 8, 20.

192. When two or more counsel argue on the affirmative, one shall open stating in connection with his argument, the points of law and authorities on which he relies ; the counsel for the negative shall then speak in succession, and be followed in reply by the remaining counsel for the affirmative. The same rule shall be observed in arguing incidental questions arising during a trial. Whenever the dispatch of business may require it, the court shall limit the time to be occupied in argument. 22.

193. The counsel maintaining the affirmative side of the question shall have the right of conclusion, previously stating briefly the material facts necessary to a proper understanding of the case, when on the argument list, and reading or giving notice to the adverse counsel of the authorities and points of law upon which he means to rely. 11, 43. There shall be but one argument to the jury on each side of the case unless otherwise arranged, with leave of the court, before the argument begins. 40.

194. All the authorities relied upon by the counsel in any case shall be cited before the concluding argument on the other side. 24, 47.

195. No expression shall be made reflecting upon the personal character, or official integrity of an attorney, or officer of the court, nor of any judge of this or of the Supreme Court, when he is not a party or witness in the cause. 8, 9, 12, 16, 28, 35, 46, 49.

196. One counsel shall not, in consequence of any supposed misstatement, interrupt another while the latter is addressing the jury ; but the former counsel may take down the misstatement in writing, and after the latter has finished his address, if he deems the misstatement important, call the attention of the court to it, and have it corrected, 15, 16, 32, 40, nor shall one counsel interrupt another while addressing a law argument to the court, unless by leave of the counsel presenting his argument. 10.

197. No counsel will be permitted to address the court, or the court and jury, for more than (one hour, 4, 16, 25, 29, 42, 46, 49, 51) (half an hour, 5, 10, 14, 23, 28, 33, 35, 40, 41) (fifteen minutes, 30, 37, 48) (forty-five minutes altogether, 2) without the special leave of the court.

198. Addresses of counsel shall not exceed the following limits, unless the time is enlarged by the court: In opening the case five minutes; on questions of evidence during the trial, five minutes (ten minutes, 10); to the court on the law of the case after the testimony has closed, ten minutes (fifteen minutes, 14); to the jury on the facts, thirty minutes (forty-five minutes, 10), (one hour, 40); and in trifling cases the time may be further reduced at the discretion of the court, 17, 50, or the time may be enlarged by the court in its discretion. 5, 14, 40.

199. In summing up a cause to a jury no counsel shall be permitted to occupy more than one hour, 8, 24 (and where the evidence is short, or the matter not important, counsel may be limited to a less time, at the discretion of the court, 16, 18, 28, 33, 35, 36, 37, 39, 48. When two counsel on a side address the jury, they shall not in the aggregate exceed one and a half hours. 6, 27. (Arguments on questions of evidence, and other intermediate points raised, shall not exceed (ten minutes, 41) (fifteen minutes, 37, 48). (But the court may in its discretion, enlarge these limits by special order. 8, 30, 37, 41, 48). If two counsel are opposed by one only (they will together be limited to the same time allowed to him, 18, 27, 28, 33, 35, 36) he shall not hereby be limited to one hour. 19.

200. No counsel shall be permitted to occupy more than forty-five minutes in the argument of any cause tried by jury, unless with the special permission of the court, and only in such cases as may, in their judgment, imperatively require a relaxation of the rule. 2

201. Counsel may, if they think proper, be permitted to make such arrangement as that one counsel may occupy more than one hour of the time allotted, it being expressly ordered that his colleague, if he has any, be restricted in his argument to the residue of the time. 2.

202. In their addresses to the jury, the counsel, where there are two or more on the same side, shall endeavor to apportion the argument among themselves, so as to avoid going over the same

ground, or repeating the same reasonings; and, in citing cases during the trial, they shall only read such parts of the opinion as apply to the position they are encountering or sustaining; the facts of the case, or the arguments of counsel, if they deem it necessary to refer to them, they may give *memoriter*. Greater latitude, however, is to be allowed to counsel replying to cases cited. 2.

203. No more than two counsel on a side shall be permitted to sum up the evidence to the jury, 16, 33, or to address the court on any legal questions. 7, 8, 12, 16, 21, 24, 25, 29, 39, 45, 46, 47, 49, 51.

204. Upon the trial of appeals from justices of the peace (actions for oral slander, actions of assumpsit for the recovery of accounts, 36,) (where the matter in controversy is too small, or the case too plain to justify a consumption of time, 18, 28, 35, 36), not more than one counsel on each side shall be heard, without permission of the court. 4, 7, 8, 11, 12, 16, 18, 22, 25, 26, 27, 28, 33, 34, 35, 36, 39, 43, 44, 45, 46, 49, 51.

205. After the evidence in a cause is closed, neither party shall be entitled to address the jury by more than two counsel (one counsel, 1, 14), and not more than three hours (two hours, 32) (one hour, 12) shall be consumed by either party, 12, 32; but this period may be enlarged or abridged by the court in its discretion.

206. When there are two or more counsel on one side, and only one on the other, he will be permitted to occupy the same time that is allotted to them. 2.

## ARREST OF JUDGMENT

[See New Trials.]

## ARTISTS

[See Experts.]



## ASSESSMENT OF DAMAGES

[See also § 1164.]

207. In all cases in which it becomes the duty of the prothonotary to enter judgment, he shall at once assess the damages. 23.

208. In cases of judgment by default (where the action is on a promissory note, bill of exchange, book account, assumpsit for payment of a sum certain, or an award, 2, 10, 16, 34, 36, 37, 39, 40, 42), and in all cases where the damages are certain, or may be rendered so by calculation, the prothonotary shall assess the damages, 2, 9, 10, 11, 13, 17, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 34, 36, 37, 39, 43, 45, 46, 48, 49, 51. He shall also ascertain them if the defendant does not object, in all other cases founded on contract and sounding in damages, giving four days (five days, 16, 42) notice of the time fixed for the assessment. But if, in cases of the latter class, the defendant objects, or if the action is founded on a tort, the damages shall be assessed by a jury of inquiry. 2, 7, 16, 20, 36, 38, 39, 40, 42, 45.

209. When the demand is for a sum certain, or the amount may be ascertained by calculation, the prothonotary shall determine the amount of the judgment, 4, 12, 41, 44; in all other cases, the court, on motion of the plaintiff, may charge the jury in attendance at any court, subsequent to the entry of the judgment, to inquire of the damages, or the cause may be placed on the trial list, according to its number and term, for the purpose of having the damages assessed. 3.

210. In all judgments by default, where the plaintiff has filed an affidavit of the amount of his claim, the judgment shall be for that amount. In other cases the prothonotary shall liquidate the amount, where from the nature of the action, it may be done without a jury of inquiry. 9, 14, 27, 41, 47, 50.

211. In judgments by default on appeals from justices of the peace, the amount shall be liquidated by the judgment of the justice with interest, 6, 28, 30, 34, 35, 45, 48, unless a statement be filed, in which case it shall be liquidated therefrom. 18, 37.

212. In all cases of judgments, by default, in actions founded upon contract (except for breach of promise of marriage) other than those founded on bond, note, bill of exchange or acceptance, proof of the indebtedness of defendant to plaintiff may

be made by the affidavit of any competent witness to be filed in the cause ; and the prothonotary shall assess the amount due, as proved by said affidavit. 32.

213. Whenever judgment is taken by default against a defendant in an action of assumpsit, or scire facias upon a mortgage, recognizance, mechanic's lien, municipal lien or judgment, the prothonotary shall immediately liquidate the same from the statement filed by the plaintiff, or the record, or recorded instrument upon which the scire facias is issued, and enter the judgment for the amount that appears to him to be due. 18.

214. Writs of inquiry shall issue of course where by law or the usual practice damages are to be liquidated. 4, 8, 9, 10, 11, 12, 13, 14, 16, 20, 23, 24, 25, 26, 27, 28, 29, 34, 36, 39, 41, 42, 43, 44, 45, 46, 47, 49, 51.

215. Ten days (four days, 2, 16, 42), (five days, 27), (fourteen days, 39), notice shall be given the defendant, (or his bail, 32) of the time and place fixed for the execution of the writ, 2, 14, 15, 16, 20, 26, 27, 28, 30, 36, 37, 42. If defendant is a non-resident of the county, and in cases of foreign attachment, notice must be posted in the prothonotary's (and sheriff's office during said ten days, 12, 51) office twenty days prior thereto. 15, 32.

216. Notice shall be served personally on the defendant if he can be found in the county, and shall be sufficient if served personally upon him anywhere. Otherwise, if a non-resident of the county, such notice may be given by publication in such manner as the court, or a law judge at chambers, shall, under the circumstances of the case, direct. At least four days' previous notice shall always be given of the execution of a writ of inquiry of damages. 7, 38.

217. The plaintiff must give written notice, ten days before the execution of a writ of inquiry of damages, to the defendant in person at his usual place of abode. If not to be found in the county, then such notice shall be posted and remain in the respective offices of the prothonotary and sheriff during said ten days. 8, 29.

218. Upon motion and cause shown the writ may be executed at the bar of the court, 4, 10, (upon ten days' notice, 5) and judgment thereon rendered during the same or the next term, 8, 9, 11, 12, 13, 14, 16, 20, 23, 24, 25, 26, 27, 28, 29, 30,

34, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51. In such cases, ten days notice must be given the defendant, or his attorney, if resident in the county. 18.

219. All juries of inquiry for the assessment of damages, shall be taken from the panel attending at some term of court, and the proceedings thereupon shall be as prescribed by the 27th section of the Act of 22nd May, 1722. 7, 38.

220. Exceptions to the inquisition must be filed within the first (four days, 16, 28, 39) (five days, 5, 27) of the term to which the writ is returnable, otherwise final judgment will be entered. 5, 27, 28, 39, on motion. 16.

### **ASSIGNEES, TRUSTEES AND COMMITTEES**

[See also §§ 1625-1629, 1639 and 1641]

221. All assignees for the benefit of creditors shall, immediately after recording the deed of assignment, cause to be printed in the legal paper, and two newspapers of general circulation in this county, once a week for six successive weeks, notices to all debtors and creditors of the assignor, to make settlement with the assignee without delay. 2.

222. In cases of assignments for the benefit of creditors reserving the \$300 exemption, the assignee or assignees shall, within 30 days after acceptance of the trust, cause the exemption appraisement to be made, having posted notices of the time and place thereof in the prothonotary's office at least five days in advance of the same. The said appraisement shall thereupon be filed forthwith in the prothonotary's office, and by him brought into court for confirmation nisi, on the motion day next following the filing of the same. If no exceptions to the same be filed in said office (within ten days, 11, 43) (before the Rule Day of the next succeeding term, 23) the confirmation shall become absolute of course. 11, 23, 43.

223. An assignee making sale of real estate by order of court shall file his account thereof within ninety days from the date of confirmation of the sale, unless an enlargement of time be granted upon application to the court and cause shown; otherwise the assignee shall not be entitled to any commissions upon the sale. 23.

224. A citation to any assignee or trustee to appear and

exhibit an account (pursuant to the 7th section of the Act of 14th June, 1836, 36) shall be of course one year from his appointment, 50, and upon the filing of the proper petition and affidavit by any person interested, or co-trustee or co-assignee, shall be issued by the prothonotary, 14, requiring the said assignee or trustee to appear and exhibit his account under oath or affirmation (within 15 days (30 days, 37) from the service thereof, 9, 17, 28, 33, 35, 36, 37, 40, 41) by the first day of the next succeeding term, after ten days' notice. 16, 42.

225. A citation under the 11th, 13th and 16th sections of the Act of 14th June, 1836, relating to assignees and trustees, may be issued by the prothonotary in vacation, returnable on the first day of the next succeeding term, upon the filing in his office of the proper petition and affidavit by any person entitled to apply for the said citation. All citations issued under the said sections of the Act in term time or vacation, shall be served at least ten days before the day of appearance, unless where otherwise specially ordered. 47. Where the circumstances of the case require it, and a special court is requested by any applicant, the petition and required affidavit of facts shall be presented in vacation to the judge of the court, who may make the order and fix the time of appearance to suit the emergency. When it shall be necessary to convene a special court, according to the 34th section of the Act of 14th June, 1836, the judge to whom application is made shall make a written order to that effect, directed to the prothonotary, along with the order to issue a citation, and stating the time and place of the holding thereof. In making out the citation, the prothonotary shall specially state therein that it is returnable at a special court to be convened at the time and place so fixed for the hearing of the case. 36.

226. [Various times, depending on local conditions, are fixed for the hearing and confirmation of accounts of assignees and trustees within the jurisdiction of the courts of common pleas.]

227. When accounts are filed by assignees or trustees, the prothonotary shall give notice thereof by publication previous to a regular term, and therewith publish this rule; and confirmation nisi on the first day of such term shall be of course, and confirmation absolute on the second Monday shall be of course, unless exceptions be previously filed. 22.

228. A notice of the filing of all accounts of assignees, trustees, receivers and committees shall (unless the court otherwise specially order, 42) be published for four weeks consecutively (two weeks, 6) (three weeks, 5, 11, 16, 18, 36, 39, 42, 43, 44) (thirty days, 12) in two newspapers of the county (one newspaper, 13, 19) (three newspapers, 1, 2, 17) (one of which shall be at the county seat, 37) (one of which shall be the paper designated by the court for the publication of legal notices, 1, 2, 5) (of different politics, and having the largest circulation, or as shall be designated by the court, 7) setting forth that the account will be allowed by the court at a certain time to be stated in the notice (not less than twenty days from the filing of the account, 5), unless cause be shown to the contrary. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 25, 26, 27, 28, 29, 32, 33, 35, 36, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51. The time fixed shall be the next regular session of the court, which shall occur more than four weeks after the first of such notices has been given. 37.

229. On the day fixed in such notice, due proof being made of such publication (and no exceptions having been filed, the account shall be confirmed absolutely, 1, 6, 11, 13, 39, 40, 42), the account shall be confirmed nisi, and unless exceptions be filed, or an auditor moved for [within a time varying from three days to three weeks], the same shall be confirmed absolutely, 2, 5, 7, 8, 10, 15, 16, 17, 18, 19, 20, 21, 26, 29, 32, 34, 36, 38, 43, 44, 45, 46, 47, 49, 50, 51, and shall be so marked by the prothonotary. 18. The costs of advertising shall be allowed as a credit in the account, 14, 19, 27, 28, 33, 35, 37, and shall be fully itemized in the account so that they may be inspected by the court. 2. [In the 23rd District the confirmation nisi is of course, and notice by posting and advertisement follows that confirmation; and in the 19th District an advertisement is required both before and after the confirmation nisi.]

230. Every account shall bear the certificate of a practicing attorney that he has examined the same in connection with the vouchers, and has satisfied himself as to its correctness, and in default of such certificate, the account will not be passed by the court. 43.

231. No account will be confirmed until after the vouchers in support thereof shall be filed. 4, 9, 25, 26, 29, 41, 44, 46.

232. No account will be allowed or passed which contains any credits whatever for compensatory fees to any county officer, or any fee or reward whatever, not, or more than is, allowed by some Act of Assembly. It shall be the duty of the respective officers having custody of accounts to inform the court of any such credit before the account shall be confirmed. 7.

233. Exceptions to any such account must be filed on or before the third day (of the second week, 4) of the term (otherwise they will not be heard, 9, 12, 25), at which the same is presented for confirmation. 4.

234. Exceptions may be signed by the party or his attorney, and where an affidavit is required to matters of fact set forth therein, the same may be made by any person having knowledge thereof. 7.

235. When exceptions are filed, the prothonotary shall forthwith place the case upon the argument list for the third week of the term. 4.

236. A final decree upon an account of assignees, trustees or committees, may be opened and corrected where no rights have changed in consequence of it; (1). Upon motion, as to mistakes of calculation and clerical errors apparent on the face of the record, and as to matters necessary to be inserted in the decree to make it formal or complete, and inadvertently omitted; (2). On petition for a rehearing, specifying the errors alleged, and if the error does not appear on the face of the record, that the facts came to petitioner's knowledge since the decree, or that unnecessary injustice will result if the decree stands; (3) by bill of review. 23, 39.

237. No final account of an assignee or trustee will be opened to allow exception to any part of it, after confirmation, except on a petition in the nature of a bill of review, specifying the particular error or omission alleged, accompanied by an affidavit of the truth of matters not contained therein; and where the objection to the decree of confirmation arises upon facts not apparent on the face of the proceedings, the petition shall further show that they came to the knowledge of the party since the confirmation of the account. 16. 42, 47.

238. The prothonotary shall record in a book kept for that purpose the accounts of assignees, committees, trustees, sequestrators, and all reports of auditors thereon, and of the

distribution or appropriation of moneys made thereby, omitting, however, the evidence upon which said reports are based, 4, and also all petitions, inventories, and returns relating to trust estates and estates of insolvents, 21, and to the sales of real estate made under order of the court. 29.

239. The manner of proceeding in this court in relation to assignees and trustees, to obtain the appearance of persons amenable to its jurisdiction, to compel obedience to its orders and decrees, and to enforce execution thereof, shall be the same as provided in the 57th section of the Act of 29th March, 1832, relating to the Orphans' Court, except in cases otherwise specially provided for. 36.

240. No assignee, trustee or committee of a lunatic or habitual drunkard shall be discharged upon his own application, unless fifteen days' personal notice of the application be given to the parties interested, if such notice be practicable; if not practicable then notice shall be given by advertisement. 3.

241. A trustee, assignee or committee will be discharged, or his appointment revoked, upon his own petition, only after full compliance with the requirements of section 22 of the Act of 14th June, 1836, and the decree shall not be entered or take effect, unless otherwise directed, until after his successor in the trust has given bond in the sum and with the sureties approved by the court. 16, 23, 39.

242. Every corporation when first applying to be appointed trustee without security, or to become security, in the courts of this county, shall make application by petition, whereupon the court will appoint an examiner to investigate its financial condition, and make report of the same to the court. 15.

243. Every such corporation shall file with the prothonotary semi-annually thereafter, on the first Monday of January and July, and oftener if requested by the court, a statement sworn to by one of its officers having knowledge of the facts, setting forth the financial condition of said corporation, with a list of the cases in which it may have become surety, or have been appointed trustee without security, and the amounts of funds in the control of each, the total amount of trust funds in its possession, with a list of the same, and that all its trust funds are kept separate and apart from the assets of the corporation, and are invested in such securities, naming them, as are

authorized by law, and in such manner as to designate the trust to which each and every investment belongs, and shall furnish such other information as the court may from time to time order. 15.

244. All trust companies now or hereafter authorized by law to become trustees, receivers, or to act in other fiduciary capacities, shall, at least twice in each year, in May and November, present to the court a full itemized statement setting forth the amount of capital stock, whether or not the charter creates any and what individual liability, what amount of cash has been actually paid in, what is the par value of the stock, what the last market or selling value of the stock, what amount of trust funds of every kind, character or nature, are then in the hands or under the control of said corporation, how said funds are invested, naming the several securities, what the assets of the company are, whether it has any and what reserve fund for contingent liabilities, losses, etc. 32.

245. No such corporation shall be appointed by the court until after a full statement, as above required, shall have been presented, and, if the court shall deem it proper, not until an examiner has been appointed and has reported to the court. 32.

246. The court may at any time appoint a suitable person to investigate the affairs and management of any such corporation, who shall report to the court the manner in which its trust investments are made; his opinion of the efficiency of the several officers of the company, and of the prudence and safety of its investments, and the security afforded to those whose interests are in its keeping. The expense of such investigation shall be paid by the company, but shall be fixed by the court in case of any disagreement. 32.

#### ASSUMPSIT

[See Affidavits of Defence, Pleading and Practice]



## ATTACHMENTS

[See also, § 648]

247. The prothonotary shall endorse upon every writ of attachment execution, and upon every writ of scire facias against garnishees in foreign attachment, a rule upon the garnishee to file under oath an answer to the writ, stating whether or not at the time of the service of the attachment upon him, or at any time since, he had in his possession or control any goods, merchandise, moneys or effects, belonging to the defendant, and, if so, the nature, amount and value of the same. If the garnishee fails to make answer as aforesaid on or before the return day of the writ, judgment by default in the proper form shall be entered against him by the prothonotary. 27, 29.

248. The prothonotary shall endorse upon every writ of attachment execution, and upon every writ of scire facias against garnishees, the following notice: "To the within-named garnishee: You are required by rule of court to file under oath an answer to this writ within twenty days after the return day thereof, stating whether or not, at the time of the service of the attachment upon you, or at any time since, you had in your possession or control any goods, merchandise, money or effects belonging to the defendant (or defendants, or either of them, if more than one, 20) (or were in any manner indebted to him, 37,) and if so, the nature, amount and value of the same (and the amount of such indebtedness, 37). If you fail to make answer as aforesaid, within the time aforesaid, judgment may be taken against you by default." 20, 37.

249. When interrogatories are filed and a rule entered to answer, at the time of filing the præcipe the prothonotary shall endorse on the writ as follows:

"Interrogatories filed by the plaintiff and rule on garnishee to answer the said interrogatories on or before the day of otherwise he the said will be deemed and taken to have in his hands, monies sufficient to pay the judgment of the said plaintiff, to wit, \$ with all costs; and judgment will be entered against the said accordingly." 16. Copies of the writ and endorsement shall be left with the defendant in the execu-

tion, and the garnishee, or at their places of abode, and the garnishee shall also be served with a copy of the interrogatories. 42.

250. Attachments execution may be made returnable at any return day of original writs, 1, 8, 21, 32, and interrogatories may be filed and served on the garnishee as in the case of foreign attachment, 5, 10, 14, 18, 40, giving him not less than (twenty days, 37, 48) (ten days, 6, 30) after the return day of the writ to make answer. 6, 30, 37, 48.

251. Bail to dissolve a foreign attachment (any attachment) shall not be taken without proof of notice to the plaintiff or his attorney, (if resident at the county seat at least six hours, and if resident elsewhere, twenty-four hours, 6, 30) (at least twenty-four hours, 10, 13, 14, 16, 17, 18, 21, 23, 36, 39, 40, 42, 48) (at least forty-eight hours, 43) notice of the time and place of entering the same, 4, 8, 9, 22, 27, 41, and of the name and residence of the bail to be offered, 1, 2, 3, 5, 6, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23, 24, 25, 26, 28, 32, 33, 34, 35, 36, 39, 40, 42, 43, 45, 46, 47, 48, 49, 51.

252. Exception may be taken to the sufficiency of such bail within four days after such notice, of which notice shall be given to the defendant or his attorney; whereupon the defendant shall, within eight days after said notice, justify the bail in open court, or before one of the judges thereof, giving the plaintiff or his attorney two days' notice of the time and place of such justification; or he may enter new bail to the satisfaction of the court or judge—the lien of the attachment to remain in the meantime. 15, 32.

253. A rule to show cause of action, and why the attachment (foreign, 9, 14, 33, 51) should not be dissolved, may be entered in the prothonotary's office, returnable (in ten days, 12, 51) to the next sitting of the court. 3, 9, 14, 19, 27, 28, 33, 35, 36, 41. Where delay would work manifest injustice, such rule may, by leave, be made returnable before one of the judges at chambers. 16, 23, 39, 45.

254. Judgment may be entered against the defendant for want of an appearance. 10.

255. If the defendant appears, he shall file an affidavit of defence, and judgment may be entered against him for want thereof, or for want of a sufficient affidavit as in other cases. 10.

256. If the affidavit of defence filed by the defendant be deemed by the court sufficient to prevent judgment being entered against him, he shall be ruled to plead as in other cases; and all proceedings upon the answers of the garnishee shall thereupon be suspended until such issue be determined. 10.

257. No judgment shall be entered against a garnishee for mere default of appearance without rule. 16, 42.

258. When an attachment execution shall have been issued upon any judgment, the garnishee or defendant, after the return of the writ, may enter a rule on the plaintiff as of course to file his interrogatories in twenty days, (two months, 18) after the service of notice of such rule, and in case of default in filing such interrogatories, a judgment of non-pros may be entered by the court on motion, and such judgment when entered shall operate to annul and defeat such attachment. 1, 18, 20, 21, 23, 32, 39.

259. In cases of foreign attachment, if the plaintiff intends to exhibit interrogatories to the garnishee, they shall be handed to the prothonotary with the præcipe for the writ of scire facias, and in attachment execution the interrogatories shall be handed to the prothonotary with the præcipe for the writ; in both cases the prothonotary shall at once enter, and endorse on the interrogatories, a rule on the garnishee in the form prescribed by the Act of Assembly, to appear and answer the interrogatories not later than five days after the return day of the writ; the interrogatories and endorsed rule shall then be handed to the sheriff, who shall serve the same on the garnishee with the writ; the prothonotary shall also enter the plea of nulla bona, when necessary. 3.

260. At any time after (judgment against the defendant, 6), the issuing of the scire facias against the garnishee in foreign attachment (or after the issuing of an attachment under the Act of 16th June, 1836, P. L. 609, relating to executions, 2, 4, 5, 9, 10, 11, 13, 14, 16, 21, 24, 26, 28, 32, 33, 34, 35, 36, 42, 43, 45, 46, 47, 49, 51) the plaintiff may file interrogatories in the prothonotary's office, and enter there a rule of course for the garnishee to answer the same on or before a day to be named in the said rule, not less than twenty days (ten days, 5, 6, 9, 28, 33, 35, 36, 40, 41, 42, 47, (fourteen days, 39) (fifteen days, 10, 12, 14, 16, 17) (thirty days, 23) from the time of serving such rule

and a copy of the interrogatories, 1, 2, 5, 8, 11, 12, 13, 14, 17, 21, 23, 24, 26, 28, 32, 34, 35, 36, 39, 40, 41, 43, 44, 45, 46, 47, 49, 51, and upon failure of the garnishee to answer, plaintiff shall have judgment. 4, 6, 9, 10, 16, 22, 25, 33, 42. [In the 30th and 48th Districts interrogatories may be filed in foreign attachment without a sci. fa., and if no answer be filed, judgment may be taken by default.]

261. The plaintiff in a foreign attachment, or an attachment to levy on stocks debts and deposits of money due the defendant, having filed a copy of the following interrogatories of record in the case,—

1. Do you know the defendant?

2. Are you indebted to the defendant, or were you at the service of the writ in this case indebted to him by note, book account or otherwise, now due or hereafter payable? If yea, state the amount of said indebtedness, and when payable.

3. Have you now, or had you at the service of the writ in this case, any stocks, debts, deposits, moneys, goods, bonds, notes, or other evidences of indebtedness in your hands belonging to the defendant, or in which he has an interest? If yea, state the kind of stock, amount of indebtedness and character of securities—

may on motion entered in the prothonotary's office, at any time have a rule on the garnishee to appear before the court on the first day of the next term, not less than fourteen days thereafter, to exhibit in writing, under oath or affirmation, full, direct and true answers to said interrogatories.

Where the plaintiff desires to have other interrogatories answered, they must be presented to the court when in session, in order that the court may judge whether they are pertinent and proper. 50.

262. If the answers, filed be not satisfactory to the plaintiff, he may file additional interrogatories, and enter a rule upon the garnishee to answer the same within (ten days, 27, 37) (twenty days, 20, 29), or judgment 20, 27, 37, and it shall be the duty of the prothonotary to endorse on the writ the substance of the rules on this subject. 29.

263. If the interrogatories filed upon any attachment contain illegal, impertinent or scandalous matter, the garnishee may file his exceptions thereto, and apply to a judge in vacation, or

the court in term time, to expunge the same, giving to the plaintiff, or his attorney, reasonable notice in writing by citation from the judge or court of the time and place of hearing; and the judge or court, on hearings shall make such order thereon as shall appear to be lawful and proper. 9, 28, 33, 35, 36, 41.

264. The rule to answer interrogatories shall be in the following form :

<p>A. B. vs. C. D., garnishee of E. F.</p>	}	<p>In the Court of Common Pleas of Franklin County, No.      , of      Term, 18      . Foreign Attachment.</p>
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18 . At the instance of the plaintiff, the court grant a rule upon C. D., the garnishee, to appear, before the said court on or before the      day of      , 18      , and then and there to exhibit in writing, under his oath or affirmation, full, direct and true answers to all and singular the interrogatories of the plaintiff exhibited and filed in this cause—a copy of which interrogatories is served with this rule—or such of them as the court shall deem pertinent and proper; otherwise he, the said C. D., will be adjudged to have in his possession moneys, goods and effects of the said E. F. liable to attachment to an amount or value sufficient to satisfy the judgment of the said plaintiff, to wit, \$      , together with all legal costs of suit and charges, and judgment will be entered against the said C. D. accordingly.” 39.

265. The rule to answer shall be served by leaving a true copy with the garnishee, or at his place of abode with an adult member of his family; and the garnishee shall also be served at the same time and in the same manner with a copy of the interrogatories. 16, 23, 39.

266. If the garnishee do not reside in the county, the rule to answer, and a copy of the interrogatories, may be served on the attorney or agent of such garnishee. 8, 21, 25, 29.

267. If the garnishee in his answers, discloses a prior attachment, prior assignment, or other prior claim of which he has notice, a rule may be granted upon such alleged prior claimant to come in and defend and interplead, 9, 50; provided he shall verify his plea by affidavit disclosing with certainty a right to

the fund prior to the plaintiff, otherwise a judgment will be entered on motion in default of a sufficient plea. 17, 28, 33, 35, 36, 41.

268. If the garnishee in his answers discloses a prior attachment, prior assignment, or other prior claim of which he has notice, he may pay the amount admitted in his hands, if then payable, into court, or if no replication as against the garnishee, the plaintiff may have judgment against the garnishee, and, if the amount be then payable, may take out execution, and have the money thereon made brought into court, to abide the event. The plaintiff may have a rule on the alleged prior assignee, attaching creditor, or other claimant, if he have appeared, to plead, or if he have not appeared, to appear and plead, at or before the first day of the next term, which rule having been served personally, on the alleged prior assignee, attaching creditor, or other claimant, at least ten days before the return day thereof, or served in such manner as may be directed by the special order of the court in the case, shall, on default made, entitle the plaintiff to judgment, to be entered at any time thereafter, on motion to the court; which judgment shall be that he recover the moneys or effects in the hands of the garnishee as against the said claimant, and that the said claimant therefrom be forever after debarred. Should the alleged prior claimant appear and plead, he must verify his plea, by affidavit of the truth of the facts contained in it, and also disclose with certainty a right to the fund prior to the plaintiff, otherwise judgment will be entered on motion for want of a sufficient plea. 18.

269. If after due service of the rule and interrogatories, the garnishee neglects or refuses to comply with the former, the plaintiff may have judgment against the garnishee, 20, 28, 36, 41, 47, unless he has filed objections to the interrogatories, or some one or more of them, as not pertinent or proper, 23, 26, 37, 39, in which case he shall give immediate notice thereof to the plaintiff, or his attorney. 42.

270. Upon such objections being filed, the plaintiff shall submit the interrogatories to the court, or a judge thereof at chambers, for allowance, upon reasonable notice to the garnishee, and the garnishee shall answer such of them as the court, or judge at chambers, has decided to be proper, within seven days (five days, 16, 42) after notice of the filing of the

decision, or the plaintiff may take judgment according to this rule. 16, 23, 39, 42.

271. If the garnishee admits goods and chattels, or a sum or value in his hands, liable to the attachment, the plaintiff may have judgment therefor accordingly, 6, 16, 42, not exceeding the amount recoverable from the defendant, 14, 40, (on motion in open court, 9) on application in vacation to the prothonotary by *præcipe* filed, 28, 35, 36, or on motion in term time. 18, 26, 30, 33, 37, 41, 48.

272. Where the garnishee admits that he has money or effects of the defendant, but not sufficient to pay the plaintiff's judgment, the plaintiff may elect to take judgment against the garnishee for the amount admitted, which the prothonotary shall enter at his request, or he may proceed for the whole. If he elects to do the latter, the prothonotary shall put in the plea of *nulla bona*, and put down the case for trial at the next term 16, 42.

273. In all cases of attachment, where judgment is obtained against the garnishee upon answers filed, the garnishee shall be allowed, out of the funds attached, \$10 for the fees of counsel in preparing the answers. 23.

274. If the plaintiff does not choose to file interrogatories, or is dissatisfied with the answers, he may, after the garnishee's appearance, enter, as of course, in the prothonotary's office a rule to plead in (fifteen days after the service thereof, 23) (fourteen days after the service of the rule in this form :

"Rule on C. D., the garnishee, to plead within fourteen days after the service of this rule ; otherwise he, the said C. D., will be adjudged to have in his possession moneys, goods and effects of the defendant, E. F., sufficient to satisfy the judgment of the plaintiff, to wit, \$ , with costs, and judgment will be entered against the said C. D. accordingly." 16, 39.)

If no plea is put in within the time allowed by the rule, plaintiff may have judgment entered in his favor by the prothonotary (at any time afterwards, 42), in the usual form of judgments by default in cases of foreign attachments, for the amount of his judgment against the defendant, with interest and costs. 16, 23, 39.

275. If the plaintiff be dissatisfied with the answers he may file a replication, and the cause will be deemed at issue and put upon the issue list. 18.

276. The garnishee, after issue joined, may demand in writing of the plaintiff, a specification of the debt or demand which the plaintiff intends to prove against the garnishee, and if the demand is made thirty, and not complied within ten days before the first day of the week at which the cause is set down for trial, the plaintiff shall not be permitted to give any evidence on the trial; and he shall, in any case, be permitted to prove only such matters as he shall specify, 16, 23, 28, 35, 39, 42, except such as are sufficiently specified in the interrogatories filed. 18.

277. In cases of attachment execution where the defendant interposes a defence, he shall set forth the grounds thereof specifically by affidavit, before or at the time of the filing of his plea, and in case he shall not file such affidavit the plea shall, on motion, be stricken off. 1, 8, 16, 21, 23, 32, 39.

278. After issue joined the plaintiff and garnishee may require bills of particulars as in other cases. 33, 41.

279. If the plaintiff in a writ of foreign attachment does not within three calendar months (six months, 4, 13, 22, 34) after judgment, issue a writ of scire facias, and rule the garnishee to answer, the court will, if no sufficient cause be shown to the contrary, order the attachment to be dissolved, 1, 8, 9, 19, 23, 28, 33, 34, 35, 36, 41, after rule granted for that purpose. 4, 22.

280. Where an attachment execution has been issued and served, and no interrogatories have been filed and served within one year (six months, 22) after the return day of the attachment, the court will, upon motion of the garnishee or defendant in the attachment, and notice to all the parties of record, or their attorneys (enter a non pros, 22), direct that interrogatories shall be filed and answered at a time fixed, or the attachment discontinued, unless sufficient cause be shown to the contrary. 46, 49.

281. If the plaintiff in an attachment execution does not within three calendar months from the return day of the writ, rule the garnishee to answer or put the case at issue; or in foreign attachment, within the same time after judgment, does not issue a scire facias, or does not within a like period after the return day of the scire facias, rule the garnishee to answer or put the case at issue, the court on motion will, if no sufficient cause be shown to the contrary, and no interrogatories be then filed, order the attachment to be dissolved at plaintiff's cost, 2,



5, 11, 14, 16, 17, 23, 26, 39, 40, 45 unless for sufficient cause the time shall be enlarged by the court. 10.

282. The answer of the garnishee shall be taken as conclusive upon the plaintiff, of the matters contained therein, unless within three calendar months from the date of filing such answer, the plaintiff shall formally traverse the same, by writing filed, averring specifically what the garnishee has in his hands not admitted by him. To such traverse the garnishee shall be required to plead non assumpsit, filing at the same time a specification of the matter of defence on which he relies. 10, 18.

283. When the garnishee shall file his answer, denying that he has assets in his hands liable to the attachment, the attachment shall be taken as dissolved, unless the plaintiff, within (fifteen days, 14) (two months, 18) (four months, 40) (six months, 16) after the return day of the rule to answer, shall cause such answer to be formally traversed, 14, 16, 18, and a rule be served on the garnishee to plead to issue. 40.

284. When the garnishee has filed answers denying the possession of assets or indebtedness, if no application be made on behalf of the plaintiff for an issue, within the next six months, the court on motion will dissolve the attachment. 4.

285. If after answers filed, the plaintiff does not for three months either take judgment on the answers, or rule the garnishee to plead (judgment may be entered by the court on the answers, at the instance of the garnishee, if the admissions therein will justify a judgment, if not, the garnishee may put in the plea of nulla bona, 23, 27, 39), the prothonotary shall enter the plea of nulla bona and put the case on the issue list. 29.

286. If book accounts, or other choses in action, be attached, the court will make such order in relation thereto as that the same may be put in course of collection. 4, 6, 9, 11, 16, 20, 22, 23, 24, 25, 30, 34, 37, 44, 46, 47, 48, 49.

287. When debts overdue are attached, the court will, on petition of any party in interest, make such order in relation thereto that the same may be put in course of collection. 3, 8, 12, 13, 14, 19, 27, 28, 33, 35, 36, 41, 43, 45, 51.

288. No order shall be made for the sale of property seized on foreign attachment (any attachment, 3, 6, 12, 13, 19, 20, 28, 35, 36, 38, 40, 50) unless the plaintiff, or some other person for him, shall make affidavit that the debt or demand is just, 1, 25,

26, 44, 46, 49 (and the amount thereof, 6, 22, 30, 37, 39, 48) and unless it shall appear to the court that the property attached is of a perishable nature, or that from other causes it would be conducive to justice that it should be converted into money, 3, 4, 6, 7, 8, 9, 10, 12, 13, 16, 17, 19, 20, 27, 28, 29, 30, 33, 35, 37, 38, 39, 41, 42, 43, 45, 48, 51; and the court will make special orders for the temporary disposition of the proceeds by investment or otherwise, 18, 21, 24, 34; notice of such application to be given to the garnishee if there be one. 2, 5, 11, 14, 15, 23, 36, 40.

#### **ATTACHMENTS AGAINST FRAUDULENT DEBTORS**

289. No bond under the 3rd section of the Act approved March 17th, 1869, will be approved by the court or the prothonotary, unless reasonable notice has been given to the plaintiff or his attorney. 13.

290. Whenever application shall be made to dissolve the attachment, accompanied by an affidavit denying generally and specifically the facts and allegations upon which the same issued, the court will dissolve the same, unless the plaintiff shall, upon hearing, satisfy the court, or a judge thereof in vacation, that the allegations of the affidavit are sustained. 13.

291. The rules relating to attachments generally shall, so far as applicable, apply to attachments under the Act of 1869. 10, 18.

292. Judgments may be entered against the defendant for want of an appearance and affidavit of defence, under the Act of 17th March, 1869, if served, as in other cases. 18.

#### **ATTACHMENT OF VESSELS**

293. All libels and answers upon attachment of vessels must be verified by oath or affirmation. 5, 14, 27, 36.

294. If the master or owner of a vessel appear, he shall file his answer to the libel within ten days (fifteen days, 14) after the return day of the attachment. (If he be not found in the county, twenty days shall be allowed him to answer, 27, 36.) If he make default, the court will proceed ex parte and pronounce the proper decree. 5, 14, 27, 36.

295. When another party is admitted on petition, he shall serve a copy of his libel or claim on the defendant or his attor-

ney, if appearing, who shall file his answer within ten days after such service ; (but if not appearing twenty days after the filing of the libel shall be allowed for the defendant to answer, 14, 27, 36), but the court may enlarge the time for answering upon sufficient cause shown. 5.

296. The libellant may within ten days (fifteen days, 14) from the filing of the answer, file exceptions thereto for insufficiency or irrelevant matter, a copy of which shall be served on the respondent or his counsel, who may thereupon amend his answer, and notify the plaintiff or his attorney thereof, within five days after said service. If the answer be not amended, or the amendments be in like manner excepted to, the exceptions shall be put on the argument list at the earliest opportunity. 5, 14, 27, 36.

297. Any party may propound interrogatories to any other party within (two weeks, 14, 27, 36) (twenty days, 5) from the time of putting in the answer, and perfecting the same if excepted to. The interrogatories shall be filed, and a copy served on the party for whom they are intended, or his attorney, who may within ten days after the same file his exceptions thereto, and apply to a judge in vacation or to the court in term time to disallow them, or to expunge the matter objected to, giving to the opposite party or his attorney reasonable notice of the time and place of hearing. The party on whom interrogatories have been served, if not excepted to, shall file his answer thereto within ten days after service ; and if excepted to, shall file it to them, if allowed, or to so much as shall be allowed, within ten days after the hearing and decision ; in default whereof, if he be a libellant, his libel shall be dismissed ; if defendant, his answer (if made) shall be treated as a nullity. Answers to interrogatories may be excepted to in the same manner as answers put in by the defendant, and subject to the same provisions. 14, 27, 36.

298. Answers to interrogatories may be excepted to in the same manner as answers to libels or claims. 5.

299. The defendant may bring into court at any time before the hearing of the cause, any sum of money which he admits to be due, together with costs accrued to that time, which the opposite party may accept or refuse ; if he refuse, he shall pay

all subsequent costs, unless he recover a sum greater than that already (tendered, 5, 36) paid into court. 14, 27.

300. No bond to dissolve such attachment shall be approved without one days written notice to the plaintiff, his attorney or agent, specifying the names, places of abode, and calling of the sureties, and the time of presenting it. 14, 27, 36.

301. Bail bonds in cases of attachment of vessels may be approved by the commissioner of bail, in the same manner, and subject to the same rules, as bail for stay of execution. 5.

### ATTACHMENTS FOR WITNESSES

[See also § 629, 1836 and 1837.]

302. Motions for attachments for witnesses must be applied for (and issued, 39) (not later than the first day, 20, 46, 49) (second day, 37, 50) of the week (during the forenoon of the day, 39) on which the subpoena required the witness to appear, 50 (or it is shown that the witness was in attendance and departed without leave, 39) otherwise the cause will not be continued when reached except under special circumstances, and on such terms as the court shall prescribe. 37, 49.

303. An attachment may be granted for a witness upon proof of due service of the subpoena (or that the witness expressly waived service, or that he knowingly evaded the service, 17, 28, 33, 35, 50) (a reasonable time before the term, 24, 25) and that the witness is material. 19, 20, 24, 25, 46, 47, 49. The attachment will not be granted unless the service of the subpoena was as early as (three days before the day fixed for trial or hearing, 17) (the Friday first before the term, 28, 33, 35) and the witness was tendered his mileage and one days pay, if demanded by him, when the witness resides beyond the limit of the town where the court is held. When the witness resides within the town where the court is held, it will be sufficient to serve the subpoena (one day before the day fixed for trial or hearing, 17) on the Saturday first before the term. 28, 33, 35.

304. An attachment for a witness may be granted if it appear by affidavit that the witness is material, and that at least as early as the Friday first before the Monday of the week on which the case is set for trial, the witness was subpoenaed personally, *i. e.*, 1st, by reading the same in his hearing; or, 2nd

by exhibiting the original subpoena to him, or giving him notice of its contents, and a copy of it, or a ticket containing its substance, unless the service was accepted, or expressly waived, or knowingly evaded. 18.

305. Attachments for defaulting witnesses shall be issued only on affidavit of personal service of a subpoena, a reasonable time before application for the attachment, and if the witness resides out of the county an attachment will be issued only on affidavit of the party applying for the same, that the testimony of the witness cannot be satisfactorily taken by deposition, accompanied by a certificate of counsel that there is good ground for such allegation. 14.

306. An attachment will not be granted for a witness residing out of the county, unless it appears that the presence of the witness is necessary for the purpose of justice, and that his deposition will not disclose all he is cognizant of material to the cause; (and if he reside under (50 miles, 17, 50) 100 miles from the court house, that the subpoena was served at least five days, and if over (50 miles, 17, 50) 100 miles at least ten days prior (to the term, 10, 18, 28, 33, 35, 40) (to the day fixed for trial or hearing, 17, 50) (or that he has been subpoenaed at least ten days prior to the time set for trial. 10 18, 40). If the witness be attending court he may be subpoenaed at any time during his attendance. 10, 17, 18, 28, 33, 35, 40, 50.

307. In all cases of attachments for witnesses the party who obtained the same (if of sufficient ability, 8) shall furnish to the sheriff a reasonable compensation for executing the same, when the process is delivered to him; and if the sheriff is unreasonable the court will fix the amount, 8, 20, 25, 46, 49, and it shall then be the duty of the sheriff to execute the same, and make a special return thereof to the court. 24, 47.

308. The sheriff shall at all times appoint a sufficient number of deputies to execute attachments during every term; and having executed the same a special return must be made to the court; when unless the court otherwise direct, the party applying for the process must pay for executing the same. 8, 20, 25, 46, 49. If the charges of the sheriff are unreasonable the court will fix the amount to be paid. 12, 51.

309. The sheriff shall not be compelled to go out of the

court to execute an attachment unless his reasonable fees are first tendered to him. 8.

310. No fees will be allowed any officer for the service of an attachment where the defaulting witness has been found in or about the Court House. 14.

### ATTORNEYS

[See also §§ 18, 20, 21, 101, 123, 126, 133, 139, 170, 188, 191-193, 196-206, 451, 1149, 1155, 1260, 1268, 1290, 1291, 1327-1336, 1389, 1590-1594, 1820-1828, 1858, and 1869-1882.]

311. The Board of Examiners shall consist of (three members, 11, 13, 25, 26, 27, 34, 43, 44, 45) (four members, 36) (five members, 2, 6, 7, 10, 12, 14, 15, 16, 17, 18, 19, 20, 24, 28, 29, 30, 32, 33, 37, 38, 39, 40, 41, 46, 47, 48, 50, 51) (six members, 3, 23) (seven members, 9, 21) (ten members, 1, 8) of the bar (who at the time of their appointment shall be engaged in the active practice of their profession, 7, 38) who shall be appointed (annually, 2, 9, 15, 17, 19, 24, 26, 28, 29, 30, 32, 33, 35, 36, 37, 39, 40, 41, 46, 47, 48, 49, 50) (semi-annually, 34) (one every year, 8, 11, 13, 43) (two every year, 3, 23) (two in each even year, and three in each odd year, 14) (one each month except July and August, 1) to serve for (one year, 1, 2, 6, 7, 15, 17, 18, 19, 21, 26, 28, 33, 35, 36, 37, 38, 39, 40, 46, 47, 49) (two years, 14) three years, 3, 11, 13, 23, 43, 45) and until their successors shall be duly appointed. 14, 23, 26. (They shall organize by selecting a president and secretary from their number. 15, 29.) (The Chairman of the Board shall be the oldest member according to date of (appointment, 11, 45) admission to the bar, 26, 43, who shall, however, have served two months on the Board. 1, 8.) (The Secretary of the Board shall be the youngest member according to date of admission to the bar, 26, who shall have served two months on the Board. 1, 8.) (The one first named shall be President, 47, and the second shall be Secretary. 20, 46, 49.) The President Judge (law judges, 6) shall be ex officio members of the Board. 2, 6, 28, 30, 35, 37, 48.

312. No member of the Bar shall be obliged to serve on the Board for two consecutive years. 18.

313. A committee to consist of three practicing lawyers

shall be appointed at the first term of the court of each year to be called the Committee on Registration of Law Students, to conduct the preliminary examinations before registering students at law. And no student shall be registered until he has produced and filed with the prothonotary a certificate of such committee. 6.

314. The duty of the Board shall be to examine applicants who shall desire to enter upon the study of the law, and also applicants for admission to practice as attorneys in the several courts of record of this judicial district, 9, 12, 14, 20, 24, 30, 37, 46, 47, 49, 51, (after notice of the time and place of meeting has been given to the several judges of this court. 10, 33). No examination shall be had except in the presence of one of the judges, 21, 25, if he can conveniently attend. 40, 51.

315. It shall be the duty of said board to keep regular minutes of their proceedings, 15, 29, (and to hand over the said minutes to their successors duly appointed as above provided. 32, 43). No inspection, copy or certificate of said minutes, or any part thereof, shall be allowed or given, except upon an order of court, on motion to that effect. 1, 3, 8, 11, 26, 32, 45.

316. A majority of said board, 2, 7, 10, 14, 15, 17, 19, 24, 29, 30, 32, 37, 38, 40, 48 (two members, 11, 13, 45) (three members, 39) (six members, 1, 8) shall constitute a quorum.

317. When a vacancy in said board shall occur in consequence of the death, removal, retirement from practice, or resignation of any member, it shall be supplied by an appointment for the unexpired period of service of such member. 3, 14, 23.

318. Subject to the approval of the court, the board shall prescribe a course of examination (for registration as students, 9, 23) and for admission to the bar, 1, 8, 9, 11, 14, 26, 37, 43, 45. The rules adopted by the board and approved by the court as to both examinations shall be printed and kept by the secretary of the board, and shall be delivered to applicants for registration or admission upon request. 13, 23, 45.

319. It shall be the duty of every attorney to register with the prothonotary, the name, age and place of residence of every person studying the law under his direction; and the time of clerkship shall be computed from the date of such registry, 1, 2, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29.

32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 45, 46, 48, 49, 51, unless credit be given in the certificate of the examiners. 10.

320. Every person desiring to apply to the Board of Examiners for registration as a student at law, must produce a certificate from his intended preceptor, stating his name, age and residence (and the time of the student will commence from the date of such filing, 16), the place or places where he has been educated, that he is a person of integrity, good moral character, and previous good reputation; that in the opinion of such preceptor he is possessed of all the qualifications, moral and educational, necessary to qualify him to begin the study of law, and that he intends to pursue his studies in this county under his direction, 18, or at some reputable law school, which shall be named. 12.

321. Every person intending to become a student at law, and making application for admission to this Bar, shall present his application in writing to the chairman of the Bar Committee, setting forth his name, age, and the name of the member of the Bar or law judge with whom he desires to register, and containing a request for a preliminary examination, which said application shall be endorsed with a certificate of the good moral character of the applicant by the member of the Bar or law judge with whom such student intends to register. Upon receipt of the application, the chairman of the committee shall designate a time and place for the appearance of the applicant for examination, which shall embrace the following branches of an English education, viz., orthography, penmanship, reading, grammar, geography, arithmetic, history, physics, English literature, and the elements of Latin. Each member of the examining committee shall mark the standing of the applicant in each branch, as follows: good, 3; fair, 2; poor, 1. An average of twenty multiplied by the number of examiners, shall be required of an applicant to pass, and a total failure in any of the required branches will prevent him from passing. 47.

322. Should the applicant pass a satisfactory examination, and be found by the committee to have sufficient mental capacity and industry to become a lawyer, and to be of good moral character, the committee, or a majority of a full committee, shall certify the same over their signatures to the prothonotary, who shall enter the name of said applicant on the Common Pleas Docket as a duly registered student. 47.



323. The applicant for admission to study law shall be examined by a board of examiners appointed by the court (as hereinafter set forth), and the report of said committee, if favorable, shall be filed with the prothonotary, and entered upon the Appearance Docket. The period of study shall begin with the filing of said certificate. 4.

324. A person about to study law with a view to his admission to this Bar, shall, at the time of commencing his legal studies, file a written declaration of his intention, in the prothonotary's office of the county, whereupon he shall appear before the Committee on Examinations, who shall examine him as to his qualifications and attainments; and, should the report of this Committee be adverse, he shall not thereafter be entitled to the privilege of examination for admission to this bar, unless, on a subsequent application, the report of the Committee be favorable. 24.

325. The Board of Examiners must, prior to registration, be fully satisfied of the applicant's good moral character, and, by examination, of his ability to read and write the English language with reasonable accuracy, and that he is possessed of a fair knowledge of (the branches hereinafter set forth). 18.

326. No person shall hereafter be registered as a student at law until he shall have undergone an examination (as hereinafter set forth) by the Board of Examiners, and shall have produced and filed with the prothonotary a certificate signed by all (a majority, 3, 5, 7, 9, 10, 14, 15, 17, 23, 29, 32, 38, 46, 48, 49) of the examiners who were present at his examination that he is sufficiently prepared and qualified to commence the study of the law, 1, 2, 3, 8, 11, 12, 14, 16, 19, 20, 24, 26, 27, 32, 34, 39, 43, 45, 51 and that they have received satisfactory evidence of his good moral character, 5, 6, 7, 9, 10, 13, 15, 17, 21, 23, 29, 30, 33, 35, 36, 37, 38, 40, 48 (and his studious and industrious habits, 46, 49); that he is a resident of a county of this District, 14) and the court has approved the application 3. [In the 3rd and 17th Districts the application must be by petition duly filed.]

327. The applicant must give notice (one week's, 1, 5, 14, 20) (ten days, 12, 24, 29, 35) (three weeks, 36) one month's, 6, 7, 8, 9, 23, 26, 32, 33, 38, 40, 48) in writing to the Secretary of the Board of his desire to be registered before he shall come before them for examination, 1, 5, 6, 7, 8, 14, 15, 20, 23, 24, 26, 32, 33,

35, 36, 38, 40, 48 (and the same notice must be given before applying for final examination 12, 29, 40). The notice shall state with what member of the Bar he has arranged to study. 9.

328. All applications for examination, subject to existing rules of court, shall be made to the Chairman (Secretary, 15, 48) of the Board of Examiners, 11 (by petition, 3), whose duty it shall be to direct the Secretary to summon the Board to meet at the earliest convenient time for the examination of the applicant, and to give written notice to him of the time and place of holding the said meeting. 1, 8, 26, 32.

329. The committee in their preliminary examinations of persons who have studied law in other counties, shall be satisfied both as to their qualifications for study, and the time they pursued in the study of the law ; but such applicants must be at least twenty years of age, and must continue their studies in this county for such period as the committee shall prescribe, provided that the same be at least one year in the office of a practising attorney. 24.

330. Persons presenting diplomas from law schools, or persons who have not been engaged in the practice of the law for over five years in another district, shall be required to pass the same preliminary examination before the bar committee, and to be registered by the prothonotary in the same form as required for students by the preceding rules. 47.

331. If the applicant shall have received a diploma of graduation from any reputable college legally authorized to confer degrees, the preliminary examination may be dispensed with. 3, 9, 11, 23, 39.

332. Students who have read law in other counties of the State may have to go before the board for preliminary examination and allowance for time read, upon showing satisfactory reasons for not completing their studies in the county where they have previously read, 14, 40, and in such case the facts shall be particularly set forth in the examiners' certificate. 10.

333. Where previous to his application for registration he has graduated at any proper college of established reputation, or studied law in a law school of good repute, or read law in some other county of this State, or in some other of the United States, and shows to the committee satisfactory reasons for not completing his studies where he has previously read, he may have

deducted from said three years a certain time, not more than one year, to be named by the Board of Examiners in their certificate of preliminary examination. 21.

334. [In the several districts, the intending student must pass a successful preliminary examination on the following subjects :

Algebra, 1, 4, 5, 11, 12, 15, 18, 20, 21, 24, 29, 40, to quadratics. 8, 17, 37.

Arithmetic. 1, 2, 4, 8, 11, 12, 15, 17, 18, 19, 20, 21, 24, 27, 29, 30, 35, 36, 40, 43, 46.

Astronomy. 33.

Book-keeping and accounts. 21.

Civil government. 37.

Constitutional Law. 29.

Constitution of Pennsylvania. 17, 21.

Constitution of the United States. 17, 21.

English—Composition. 17.

Education. All branches of a thorough, 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43, 44, 45, 46, 48, 49, 50, 51.

Grammar. 1, 2, 4, 11, 15, 17, 18, 19, 21, 24, 27, 29, 30, 32, 33, 35, 36, 40, 43.

Orthography. 11, 15, 24, 33, 40.

Reading and Writing. 4, 18, 24, 29, 30, 32, 35.

Spelling. 1, 2, 4, 19, 27, 29, 32, 36, 43.

Etymology. 1, 19.

Geography. 1, 2, 8, 11, 12, 15, 17, 18, 19, 20, 21, 24, 29, 30, 32, 35, 43, 46.

Geography, Physical. 29, 33, 40.

Geography, Political. 33, 40.

Geometry. 5, 8, 15, 18, 20, 24. Plane, Solid and Analytical, 40.

History—Ancient and Modern, 33, 36, particularly that of the United States and England. 1, 24, 29, 43, 46.

English. 2, 4, 8, 11, 12, 15, 17, 18, 19, 20, 21, 27, 32, 37, 40.

Roman. 8, 20.

Sacred. 33.

United States. 2, 4, 8, 11, 12, 15, 17, 18, 19, 20,  
21, 24, 27, 30, 32, 35, 37, 40.

Latin.—2, 9, 12, 19, 24, 27, 37, 39.

Grammar. 8, 15, 17, 18, 33, 36, 40, 46.

Language. Elements of, 3, 5, 6, 7, 8, 10, 12, 14, 15,  
16, 17, 20, 23, 24, 26, 31, 32, 33, 35, 36, 37, 38, 40,  
46, 48, 49, 50, 51.

Reading and Translating. 46.

Translation of Cæsar. 18, 20, 33, 36, 40.

First book of, 17, 37.

Three books of, 8.

Cicero. 20, 33, 40.

Horace. 36.

Virgil. 20, 33, 40.

Law. Bishop's First Book of, 27.

Literature. English and American, 12, 27, 29.

Logic. 8, 20, 33, 40, 46.

Mathematics. 32, 33.

Natural Sciences. 5.

Philosophy.—Mental, 33.

Natural, 24, 30, 35, 46.

Physiology. 33.

Political Economy. 33, 40.

Rhetoric. 8, 20, 33, 40, 43, 46.

Surveying. 8, 20, 40, 46.

Trigonometry. 8, 15. Plane and Spherical, 40.

In the 10th, 22d, 23d, 25th, 34th, 39th, 41st, 42d and 47th  
Districts no course of study is prescribed.]

335. The court shall admit a competent number of persons,  
learned in the law, to practice as attorneys. 47.

336. The committee to examine applicants for admission  
shall be duly sworn. 16.

337. Every examination shall consist partly of written  
questions to be answered in writing by the student, 47, which  
questions and answers shall be reported to the court. 5, 10, 33,  
40, 46, 49.

338. All examinations shall be written as well as oral, and  
at least 75 per cent. of correct answers will be required in all  
written examinations, and a relative proficiency in all oral  
examinations. 12.

339. No final examination for admission to the bar will be held unless the student shall produce, as preliminary to his examination, the following papers:

(a) A certificate from the prothonotary under the seal of the court showing the date of registration.

(b) A certificate from his preceptor, or other instructors, stating specifically what works the student has studied, and certifying that such student has completed the course, and studied the subjects required by the Rules of Court, and is in his opinion qualified for final examination, 12, (and is a person of integrity and good moral character. 21).

At the close of the written examination on each subject, each student must affix to his answers the following declaration, and subscribe to the same:

“ I hereby declare that prior to this examination I had no knowledge of the questions to be proposed and answered, and have neither given nor received explanations, or other aid, in answering any of them.” 12.

340. No committee will be appointed for the examination of an applicant for admission, unless it shall be certified that one year immediately preceding his application was spent in the office of a practicing attorney, or his studies during that time prosecuted under the immediate direction of some gentleman of the law of known abilities, 42, which time shall be devoted to the assiduous study of the law to the entire exclusion of any business pursuit or other avocation, and that the course of study was that prescribed by these rules. 16.

341. Upon motion and filing a certificate by his preceptor that the student has studied with assiduity the several topics designated by the rules of court, under the direction of the attorney so certifying, and that such student is well grounded in the principles of law relating thereto, the court will appoint a committee to examine the applicant for admission to the bar. Provided that when the attorney under whose direction any person is studying shall die or remove from the county during the period of study, the court may receive other satisfactory evidence of such study; and if any person shall have studied in part under the direction of an attorney residing in another county, the court may, on satisfactory proof of the full period of study, permit him to be examined for admission. 22.

342. Every application for admission to practice shall be by petition, setting forth the necessary qualifications under these rules. A student's petition shall be accompanied by his preceptor's certificate of the facts therein stated; an attorney's by the certificate of the Board of Examiners that they have received satisfactory evidence of his good moral character and standing at the bar, and professional qualification, and recommend his admission; and by the certificate of a law judge of the court where he has last practiced to his moral character and good standing at the bar. 50.

343. When application shall be made for the admission of any person, qualified according to these rules, the court shall appoint three or more gentlemen of the bar to examine him, in the fullest manner, in the presence of the President or any other judge; and if it be unanimously certified, by the gentlemen so appointed, that he is well qualified to practice, he may be admitted. 42.

344. No person shall be admitted (or permitted to continue, 47) to practice as an attorney of these courts (unless entitled under the Act of 7th May, 1885, 36) except upon the following conditions:

*First.* He shall be a citizen of the United States and of full age, 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 32, 33, 35, 36, 37, 38, 40, 41, 43, 44, 45, 46, 49, 50, and a person of integrity and good moral character. 12, 17, 29, 39, 47, 48, 51.

*Second.* He shall have served a regular clerkship in the office and under the direction of a practising attorney (or law judge of this or some other court, 5, 6, 7, 17, 19, 26, 27, 30, 37, 38, 45, 46, 47, 49) of this Commonwealth for the term of three years, 7, 9, 27, 41 (two years, 10, 20, 47) (four years, 12) (or has studied law with assiduity under the direction of some practising attorney, or gentleman learned in the law (or law judge, 6, 17, 19, 26, 30, 37, 45, 47, 48) of this Commonwealth for the term of two years (three years, 12) after his arrival at the age of twenty-one years, 2, 4, 5, 6, 8, 11, 12, 13, 14, 16, 17, 18, 19, 25, 26, 28, 29, 32, 33, 34, 35, 37, 40, 42, 46, 47, 48, 49, 50, 51) the last year (two years, 3, 9, 24, 30, 41, 44) of which clerkship shall have been passed in the office and under the direction of a practising attorney (or law judge, 17, 19, 26, 37, 48, 49) in this

county, 1, 4, 6, 9, 10, 11, 13, 14, 17, 20, 21, 22, 23, 26, 28, 30, 32, 33, 34, 35, 36, 37, 39, 40, 41, 43, 44, 45, 46, 48, 49, 50 (and unless it is so certified by the gentleman under whom he may have studied, and also that he is a person of integrity and good behavior, 2, 3, 12, 15, 19, 24, 42): Provided that all but eighteen months (one year, 42) of the course may be spent in the office of a practising attorney of some other State. 8, 16, 42.

*Third.* He shall have undergone an examination before the Board of Examiners, 12, appointed for such purpose (as hereinafter set forth) and shall produce and file with the prothonotary at the time his admission is moved for, a certificate signed by all (a majority, 2, 9, 17, 47) of the examiners who were present at his examination that they have examined him in the fullest manner, and that he is sufficiently qualified for admission to the Bar, 2, 30, 47, 51, and that they have received satisfactory evidence in writing of his good moral character (and that he has complied with the requisitions of the rules of court, and is of lawful age, 23) which shall also at the same time be produced and filed as aforesaid, 1, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 37, 38, 40, 41, 43, 44, 46, 48, 49, 50, (and shall also produce and file proof of publication of notice of his intended application, 11, 45) and the proceedings must be approved by the court. 3.

345. [The student must pass a final examination in the several districts on the following subjects:

Acts of Parliament in Force in Pennsylvania, and decisions thereon, 22.

Agency—Redfield or Parsons, 37.

Story or Wharton, 34.

Bailments—Jones, 15.

Redfield or Parsons, 37.

Story, 28, 30, or Edwards, 34.

Blackstone's Commentaries—1, 4, 5, 6, 9, 11, 12, 15, 16, 17, 18, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 46, 47, 49, 51.

Bills of Exchange—Byles, 5, 11, 17, 32, 43, or Parsons, 36, or Edwards, 37.

Chitty, 34, or Byles, Parsons or Story, 22.

Story, 30.

Treatise on, 6, 12, 29, 51.

Bouvier's Institutes—30, 34, 44.

Commercial Law—Sharswood's, 43.

Constitution of Pennsylvania—1, 8, 9, 11, 15, 16, 20, 22, 27, 31, 32, 35, 36, 39, 43, 44, 47.

Constitution of United States—1, 8, 9, 11, 15, 16, 20, 22, 27, 31, 32, 36, 39, 43, 44, 47.

Story on, 35.

Cooley on, 16, 39.

Contracts—Chitty, 32, or Smith, 5, or Parsons or Addison, 31.

Parsons, 21, 30, 44, Chitty or Comyn, 34.

Parsons, Story, Addison, or Chitty, 22.

Smith, 17, 27, or Parsons, 4, 11, 43, or Hare or Wharton, 37.

Story, 30, or Parsons or Wharton, 36.

Treatise on, 6, 12, 28, 29, 33, 42, 46, 47, 49, 51.

Corporations—Angell and Ames, 37, or Field, 30.

Criminal Law—Bishop's, 36, or Wharton's, 4, 22.

Treatise on, 12, 51.

Wharton, 32, 34, 37, or Russell on Crimes, 8, 28.

Criminal Procedure—Bishop on, 22.

Domestic Relations—Reeves or Schouler, 22, 37.

Equity—Adams, 17, or Bispham, 44, or Langdell, 37.

Bispham, 9, 15, 20, 36, or Bigelow, 16.

Brightly, 30, 35, or Story, 34.

Haynes or Bigelow, 39.

Hunter's Suit in, 9.

Rhone's Equity Practice, Vol. I, 16.

Story, 32, or Bispham, 11, 43, or Adams, 1, 5, 8, 22, 31.

Treatise on, 6, 12, 21, 29, 33, 40, 46, 47, 49, 51.

Estates—Preston on, 30.

Ethics—Professional, 33.

Sharswood, 18, 36.

Evidence—Greenleaf, 21, 30, 32, 42, or Wharton, 4, or Starkie, 34.

Greenleaf, or Starkie, 28, or Best, 22.

Greenleaf (Vol. I), 1, 9, 11, 15, 16, 17, 20, 27, 31, 35, 36, 41, 43, 44, or Stephen or Wharton, 5.



- Greenleaf (Vols. I, II and III), 8.
- Treatise on, 6, 12, 29, 40, 46, 47, 49, 51.
- Executors—Hood or Williams, 34.
- History—Humes, 28, and Macaulay's, of England, 36.
- Standard History of England, 6, and of the United States, 4.
- Intestate Laws—Scott on, 32, 34, 44.
- Introduction to Robertson's Charles V—1, 20, 31.
- Kent's Commentaries—1, 5, 6, 8, 9, 12, 15, 20, 21, 29, 30, 31, 32, 35, 36, 37, 40, 41, 42, 43, 44, 46, 47, 49, 51, or Bouvier's Institutes, 22. [Vol. I of Kent only, 11.]
- Landlord and Tenant—Taylor or Smith, 22.
- Land Titles—Sergeant, 44.
- Law—Robinson's Elementary, 37.
- Law and Equity—Principles and Practice of, 5, 7, 19, 23, 46, 48.
- Law Studies—Warren's, 22.
- Luzerne Co.—Brief of Title in Seventeen Townships in, 11.
- Married Women and Trusts—Husbands on, 27.
- Maxims—Broom's Legal, 18.
- Medical Jurisprudence—Wharton & Stille's, 22.
- Miscellany—Such other legal, historical and scientific works as the preceptor requires, 18, 28.
- Nisi Prius—Archbold or Selwyn, 22.
- Partnership—Parsons, Pollock or Lindley on, 37.
- Story on, 5, or Parsons, 22.
- Personal Property—Williams, 27, or Schouler on, 22.
- Pleading—Chitty, 4, 28, 30, 47, (Vol. I, only) 8.
- Stephen, 1, 4, 5, 8, 9, 11, 15, 16, 17, 20, 27, 31, 32, 35, 36, 39, 42, 43, 44, or Chitty, 21, 34, 37, or Gould, 22.
- Treatise on, 12, 29, 40, 46, 49, 51.
- Practice—Brewster's, 41.
- Treatise on, 6, 29, 33, 40, 43, 46, 49.
- Troubat & Haly's, 1, 8, 17, 20, 21, 22, 27, 28, 30, 31, 34, 39, 44, or Brewsters, 11, 35, 37, 43, 47.
- Troubat & Haly's, Vol. I only, 16.
- Practice in Orphans' Court—Rhone or Brewster, 20.
- Treatise on, 8.

- Promissory Notes—Byles, Parsons or Story, 31, or  
Chitty, 22.  
Chitty, 34.  
Story, 15, 27, 30, or other standard  
author, 28.  
Treatise on, 6, 12, 29, 51.
- Real Estate—Mitchell on Real Estate and Conveyancing  
in Pennsylvania, 11, 27, 37.  
Price on Act relating to, 43.
- Real Property—Treatise on, 12, 51.  
Washburn, 30, 35, or Williams, 5, 22.  
Williams, 36.
- Rules of Court, 1, 16, 17, 22, 39, 43.  
Equity, 1, 8, 9, 11, 16, 27, 31, 39.  
Supreme Court, 22.
- Sales—Story, Hilliard or Benjamin, 22.
- Statutes of Pennsylvania, 46, 49.
- Torts—Addison or Hilliard, 22, 36.
- Wills—Redfield, Jarman or Williams, 22.
- Acts of Congress relating to  
Bankruptcy, 1, 31.  
Judiciary, 1, 8, 20, 31, 32.
- Acts of Congress and Decisions relating to  
Arrest and Bail, 22.  
Authentication of Records, 22.  
Bankruptcy, 22.  
Crimes, 22.  
Fugitives from Justice, 22.  
Naturalization, 22.
- Statutes of Pennsylvania (and decisions thereon, 22) relating to  
Abatement, 22.  
Actions Personal, 1, 4, 8, 15, 16, 22, 27, 31, 32, 35, 36, 39.  
Actions Real, 1, 4, 8, 15, 16, 22, 27, 31, 32, 35, 36, 39.  
Acts of Assembly, 16, 22, 39.  
Amendments, 1, 8, 11, 15, 16, 22, 31, 32, 36, 39, 43.  
Arbitration, 15, 22, 32, 36.  
Assignments, 1, 8, 15, 27, 31, 32, 35, 36, 37.  
Attorneys-at-Law, 16, 22, 39.  
Bills of Exchange, 1, 8, 15, 16, 22, 31, 32, 36, 39.  
Bonds, 1, 8, 15, 16, 22, 31, 32, 36, 39.

- Common Carriers, 22.
- Common Pleas, 22.
- Constables, 22.
- Contempt of Court, 22.
- Contracts of Decedents, 1, 4, 8, 21, 22, 27, 39.
- Corporation Act of 1874, 37.
- Crimes, 1, 4, 8, 15, 16, 21, 22, 27, 31, 32, 36, 39.
- Criminal Procedure, 4, 15, 16, 21, 22, 27, 39.
- Decedents' Estates, 1, 4, 8, 15, 18, 22, 27, 31, 32, 35, 36, 39.
- Declarations, 8.
- Deeds and Mortgages, 1, 8, 15, 21, 22, 27, 31, 35.
- Defalcation, 1, 8, 15, 16, 22, 31, 32, 35, 36, 39.
- Distress for Rent, 11, 43.
- District Court, 1.
- Divorce, 22, 31, 36.
- Domestic Attachments, 22.
- Dower, 1, 8, 15, 16, 22, 31, 32, 36, 39.
- Ejectment, 1, 8, 15, 16, 27, 31, 32, 36, 39.
- Equitable Plaintiffs, 16, 39.
- Equity, 1, 8, 15, 16, 21, 22, 31, 32, 36, 39.
- Errors and Appeals, 22.
- Estates Tail, 1, 8, 15, 22, 31, 32, 36, 39.
- Evidence, 8, 11, 15, 16, 18, 22, 36, 37, 39, 43.
- Execution, 1, 8, 11, 15, 16, 22, 27, 31, 32, 35, 36, 39, 43.
- Execution Attachment, 16.
- Factors, 1, 8, 31.
- Foreign Attachment, 1, 8, 15, 16, 22, 31, 32, 39.
- Frauds and Perjuries, 1, 8, 11, 15, 16, 21, 22, 31, 32, 35, 36, 39, 43.
- Ground Rents, 1, 8.
- Habeas Corpus, 1, 4, 8, 15, 27, 31, 32, 35, 36.
- Husband and Wife, 15.
- Interest, 22, 36.
- Intestates, 1, 4, 8, 11, 15, 21, 22, 27, 31, 32, 36, 37, 39, 43.
- Joint Tenancy, 1, 8, 15, 22, 31, 32, 39.
- Judgments, 1, 8, 11, 16, 22, 27, 31, 32, 35, 36, 39, 43.
- Justice of the Peace, 22.
- Landlord and Tenant, 1, 8, 15, 16, 22, 31, 32, 35, 36, 39.
- Land Office, 22.
- Liens, 1, 8, 15, 27, 31, 32, 36.

Limitation of Actions, 1, 4, 8, 15, 16, 22, 27, 31, 32, 35, 36, 39.

Limited Partnership, 22.

Marriage, 1, 8, 11, 21, 22, 27, 31, 36, 43.

Married Woman's Act, 31.

Mechanic's Liens, 16, 22, 36, 39.

Negligence, 22.

Orphans' Court, 1, 4, 8, 21, 22, 27, 31, 35, 36, 39.

Oyer and Terminer, 22.

Partition, 1, 8, 16, 31, 36, 39.

Partnership, 22.

Poor, 22.

Practice, 16, 22, 34, 39.

Procedure, 16, 18, 37.

Promissory notes, 1, 8, 15, 16, 22, 31, 32, 35, 36, 39.

Quarter Sessions, 22.

Real Estate, 1, 8, 15, 16, 22, 27, 31, 36, 39.

Register and Register's Court, 1, 8, 15, 22, 31, 32, 35, 39.

Replevin, 1, 8, 16, 31, 35, 36, 39.

Roads and Bridges, 22.

Taxes, 22.

Tender, 22.

Timber, 22.

Trespass, 1, 8, 15, 16, 22, 31, 32, 35, 39.

Trustees, 1, 8, 16, 22, 31, 36, 39.

Verdict, 16, 39.

Waste, 16, 39.

Wills, 1, 11, 15, 21, 22, 27, 31, 32, 36, 37, 39, 43.

Witnesses, 22, 39.

Witnesses in connection with Act of 1887, 16.

All the leading titles in Pepper & Lewis, or Purdon, 12.

And the following is recommended as an additional course of study :

Acts of Congress relating to the Judiciary, 11.

Bailments—Story or Edwards, 11.

Bills and Promissory Notes—Byles, 9.

Bouvier's Institutes, 11.

Common Law—Holmes on, 39.

Contracts—Smith, 1, 8, 9, or Anson, 20.

Smith or Chitty, 11.

Smith or Langdell, 39.

- Criminal Evidence—Roscoe's, 9.
- Criminal Law—Wharton, 1, 11, 27, 31.
- Ethics—Sharswood's Legal, 5.
- Evidence—Abbott's Trial, 27.
  - Greenleaf (vols. 2 & 3, 1, 9, 11, 27, 31).
  - Starkie, 11 (vol. 1, only, 1, 8, 31.)
- Introduction to Robertson's Charles V, or Hallam's Middle Ages, 11, 39.
- Kent's Commentaries, 39 (Vols. 2, 3 and 4, only, 11).
- Law—Bishop's First Book of, 39.
  - Bishop on the Written, 39.
  - Washburn's Lectures on, 5.
- Liens—Trickett on, 27.
- Logic and Rhetoric—Treatise on, 32
- Maxims—Broom's Legal, 5.
- Personal Property—Williams on, 9.
- Pleading—Chitty, Vol. I, 11.
- Real Property—Williams on, 1, 8, 9, 11, 31.
- Torts—Bigelow, 39.
  - Cooley or Hilliard, 20
- Wills—Hawkins on, 9.
- Statutes of Pennsylvania relating to
  - Actions Personal, 5, 11.
  - Actions Real, 5, 11.
  - Aliens, 1, 8, 31.
  - Amendments, 27.
  - Arbitration, 27.
  - Assignments, 11.
  - Attorneys at Law, 1, 8, 11, 27 31
  - Bills of Exchange, 11.
  - Bonds, 11.
  - Charities, 11.
  - Charters, 1, 8, 31.
  - Collateral Inheritance Tax, 1, 8, 11, 27, 31
  - Contracts of Decedents, 5, 11
  - Corporation Act of 1874, 11.
  - Corporations, 27, 31.
  - Crimes, 5, 11.
  - Criminal Procedure 1, 8, 11, 31.
  - Decedents' Estates, 5, 11.

Deeds and Mortgages, 5, 11.  
Defalcation, 11.  
Divorce, 1, 8, 11, 27.  
Dower, 5, 11.  
Ejectment, 5, 11.  
Equitable Plaintiffs, 1, 8, 11, 31.  
Equity, 5, 11  
Errors and Appeals, 27.  
Estates Tail, 5, 11.  
Evidence, 1, 8, 11, 27, 31.  
Feme Sole Traders, 1, 8, 11, 31.  
Foreign Attachment, 11.  
Frauds and Perjuries, 5.  
Ground Rents, 5.  
Husband and Wife, 11.  
Interest, 1, 8, 11, 31.  
Juries, 27.  
Justice of the Peace, 11, 27.  
Laborers, 27.  
Landlord and Tenant, 27.  
Liens, 11.  
Limitation of Actions, 5, 11.  
Limited Partnership, 1, 8, 11, 27, 31.  
Lunatics and Habitual Drunkards, 1, 8, 11, 27, 31.  
Luzerne County Acts of 6th April, 1869, 23rd March, 1870,  
and 22d June, 1871, 11.  
Mechanic's Liens, 1, 5, 8, 11, 31.  
Orphans Court, 5, 11.  
Partition, 5, 11.  
Partnership, 27.  
Practice, 1, 8, 11.  
Promissory Notes, 11.  
Quarter Sessions and Oyer and Terminer, 27.  
Railroads, 27.  
Real Estate, 5, 11.  
Reference Act of 1874, 11.  
Register of Wills, 11.  
Replevin, 11.  
Roads, Highways and Bridges, 27.  
Trespass, 11.

Trustees, 5.

Unseated Lands, 11.

Verdict, 1, 8, 11, 31.

Wages, 27.

Wills, 5.

In the 2nd, 3rd, 10th, 13th, 14th, 24th, 25th, 26th, 28th and 45th Districts no course of study is prescribed or recommended.]

346. Every student at law, before making his application for admission to the bar, must pass an examination in the first four books of Cæsar's Commentaries, as a test of his knowledge of Latin. No application for his admission will be considered by the court unless he present at the same time a favorable report on this examination. 43.

347. No credit shall be allowed for time absent from the preceptor's office, other than a vacation not exceeding eight weeks in any one year. 18.

348. When the applicant has studied, or intends to study with a member of the Board of Examiners, such member shall not participate in the examination, but his place shall be filled by the other examiners, or a majority of them, selecting a disinterested member of the bar to act for the special occasion. 36.

349. Applications for admission must be made during a regular term, and not at an adjourned term; but a motion for the appointment of an examining committee may be made at any time. 22.

350. No examination of a student at law for admission to practice shall take place except at a regular meeting of said Board, 1. 8, 11, 12, 26, 45 (at least thirty days before the next regular term of court, 43) (and at these examinations any member of the bar who desires may be present. 2). Notice of the time and place of meeting shall be given to the judges of the court that such of them as see proper may attend. 19.

351. No action shall be had by the Board on any application for admission to the bar, unless notice shall have been given of such application by publication (in the legal newspaper for four weeks, 1) (three weeks, 3, 11) in a newspaper at the county-seat stating (in whose office he has studied, 9) the name, date of registry and time of application; for (three weeks, 36) (four weeks, 9) (two public newspapers to be designated by the

court for four weeks, 32) immediately preceding their action. 1, 3, 9, 11, 32, 36.

352. Any student not appearing for his final examination within five years from his registration shall be stricken from the list of students by the prothonotary. 18.

353. A person who has studied law, or resides in some other county of this State, shall first be admitted in that county, 4, 9, 27, 28, 35, 41, 43, or shall show a satisfactory reason why he was not admitted there, 12, 25, 26, 33, 47, which reason shall be in writing verified by the affidavit of the applicant, and certified by counsel moving for such admission to be, in his opinion, satisfactory. 11, 16, 34, 42, 44.

354. No person who has studied law in this county and has procured his admission elsewhere, shall be admitted without examination, and the production and filing of the certificate and evidence as in the case of a student, unless he shall have submitted his papers to the Board of Examiners, and satisfied the Board that he had not procured his admission elsewhere as a mere preliminary to his admission in this Court, and the Board shall have approved his admission without further examination; and also shall have had satisfactory evidence of his integrity and good moral character; all of which shall be reported to the court, whereupon the court, also approving, he shall be admitted. 21.

355. Any attorney shall upon application in open court be admitted to practice in the several courts of this district, by exhibiting to the court a certificate of his admission to the Supreme Court of Pennsylvania, and filing a certificate of the presiding judge of the district from which he came, setting forth that he is of reputable professional standing, and of good character. 18, 30, 37, 46, 49.

356. Attorneys residing in the State, and admitted to practice in any county of this Commonwealth, but who have not been admitted to practice in the Supreme Court, may be admitted without examination, by exhibiting to the court a certificate of admission to the courts in another district, and filing a certificate of the presiding judge of such district, bearing date within sixty days immediately preceding such application, setting forth that he is in actual practice, of reputable professional standing, and of good moral character. Provided that such application in the first



instance shall be referred to the examining committee and receive a favorable report therefrom, unless the presiding judge has such personal knowledge of the facts as to render such reference unnecessary. 18.

357. Persons already admitted to practice in other courts of this Commonwealth may, at the discretion of the court, be admitted without an examination, on the production of a certificate by the presiding judge of the court of common pleas of the county wherein such person has been last admitted and practiced, of the good moral character and professional standing of the applicant, 3, 8, 11, 21, 27, 30, 45, (but this rule shall not apply to any applicant for general admission, if objected to by any member of the bar in good standing. 35 ) (Such certificate may be dispensed with where the president judge or any member of this bar in good standing has knowledge of the requisite facts. 9, 28, 35, 41.) (No person shall be admitted without registration and examination who has studied law in this county, and has procured his admission elsewhere as a mere preliminary to his admission in this county. 1, 8, 20.) Provided the Board will certify that they have examined the papers of the applicant, and believe him entitled to admission without further examination, 13, 32, otherwise the admission shall be *pro hac vice*. 27.

358. Any member of the bar of another district, who desires to locate permanently, or engage regularly in the practice of the law in this county, shall present his application to the court, with the certificate required by the Act of Assembly from the president judge of the district in which he last practiced, together with such other recommendations as he may have. The same shall be referred to the bar committee, who shall determine by such examination and investigation as they deem proper, whether the applicant should be admitted, and shall make report of the result of their examination and investigation to the court. 47.

359. Attorneys who have been elsewhere admitted, may, at the discretion of the court, be admitted to practice in this court, 22, if they do not intend to become resident practitioners. 21, 29.

360. All attorneys from other courts applying for admission to practice in these courts shall in the first instance present their

papers to the Board of Examiners, which Board (may, notwithstanding any other rule, exercise their discretion regarding the examination of the applicants, and, 1,) shall report on the propriety of the admission of such attorneys. 1, 4, 8, 20, 51.

361. Every application made by a member of the bar of any other court, for admission to the bar of this court (with a view of becoming a permanent and resident practitioner, 15, 23,) shall be referred to the Board of Examiners, and be admitted only on their favorable report, after examination, if they deem it necessary. 21, 24. The applicant shall produce to the Board the certificate of the presiding judge of the court wherein he last practiced, that he is of reputable professional standing and good moral character, 2, 10, 19, 46, 49, and his own certificate that he intends permanently to reside and practice in this county, which certificates shall be filed by the Board with their report. 15, 23. If the rules regulating admission to the bar to which such applicant belongs will permit the general admission of members of this bar without examination, a like courtesy will be extended here, but a copy of such rules must accompany the application. 17, 26, 43.

362. An attorney at law of another court who applies for admission to practice in these courts shall present his petition setting forth under oath the time and place of his admission to the bar; the time and place of his last admission to practice; the length of time he has been in continuous practice of the law immediately prior to his application here; and such other facts as he may deem material. He shall annex the certificate of the presiding judge of the court wherein he was last admitted and has practiced, under the seal of the court, showing the length of time he has practiced in that court, and that he is of reputable professional standing and good moral character. The petition and papers will be referred to the Board of Examiners. If their report thereon is favorable to the applicant he may be admitted. If, however, he has not practiced in this State, or if he has been practicing in this State less than two years, the Board may require an examination in law and in letters. 16, 39.

363. No person admitted to practice in other courts of this or other States shall be admitted to practice in the courts of this district unless he shall furnish to the court a certificate, signed by a majority of the members of the Board of Examiners, that

they have received satisfactory evidence of his good moral character and professional acquirements (including at least two years diligent study or practice of the law, 14, 29, 40), and also a certificate from the president judge of the court where he last practiced that he is a practicing attorney of said court in good standing and of good moral character, 5 (and the length of time he practiced therein, 14, 29, 40): Provided, that these certificates may be dispensed with, where the presiding judge has personal knowledge of the requisite facts, 37 48, 49, or a member of the bar of good standing has such knowledge. 33.

364. Attorneys who have been admitted in the courts of other States of the Union may be admitted here if their courts admit attorneys of this State. 4.

365. Attorneys from other States may be admitted after a residence of two years (one year, 21) within this State, the last year of which residence shall have been passed within this county, 25, upon producing satisfactory evidence of their admission into the Supreme or Superior Court of the State from which they came, and a certificate signed by the chief justice or presiding judge of such court, that they are of good standing at the bar and of good moral character, 1, 8, 20, 32, 41, which paper shall be referred to the Board of Examiners, to report to the court on the propriety of the admission of such attorneys. 21.

366. Attorneys from other States upon producing satisfactory evidence of their admission into the Supreme or Superior Court of the State from which they came, and of their having practiced in some one or more of the courts of record of that State during seven years (five years, 20, 32), or more, may be admitted to practice at the bar of these courts upon the recommendation of the Board of Examiners thereof, 1, 8, 20. Provided, no attorney shall be admitted to practice in this court upon the ground that he has been admitted to practice in the courts of some other State, unless he be a citizen of the United States, and also unless it be shown that the attorneys of this court are entitled by the practice of the court where the applicant has been admitted, to admission under the like circumstances. 32.

367. An attorney of good character and known abilities, originally admitted in any of the courts of the United States, wherein a reciprocity in this respect is observed, may be

admitted at the discretion of the court, 42, 44 (when he shall present the certificate of an attorney or gentleman of this bar, of known abilities, that the applicant has studied law with assiduity in his office for a space of six months, and that he is well qualified to practice law in this State, 3, 11, 45) together with a certificate of the Board of Examiners, after examination, recommending his admission, and satisfactory evidence that he is in other respects entitled to admission under these rules, and is a person of integrity and good behaviour, 9, 11, 18, 43, 45, otherwise the admission shall be *pro hac vice*. 27.

368. Gentlemen of the bar of known integrity, who have been admitted to practice in some other of the United States, may be admitted here if the courts of the State in which they are admitted reciprocally admit attorneys or counsellors of this State, 34; but no attorney of any other of the United States, which does not reciprocally admit as aforesaid attorneys of this State, and no attorney of a foreign country, may be admitted here, unless he has resided in the State one year (two years, 25,) next preceding his application for admission, and produces a certificate under the seal of the Superior Court of the State or country in which he is an attorney or counsellor, that he has been duly admitted to practice in the courts of that State or country; and if formerly an alien, unless he has become a citizen of the United States. 25. Provided, that all such applications must be referred to the Board of Examiners, and a favorable report from them must precede the admission of the applicant. 12, 51.

369. Attorneys of courts (of equal grade with this court) of other States, who have practiced therein for two years (one year, 28, 35) or more, after studying six months with a practicing attorney or judge of this court, and after passing a special examination upon the Constitution and statutes of this Commonwealth, and the jurisprudence and practice peculiar to this State, may be admitted on furnishing satisfactory evidence of good moral character, as in other cases. 17, 28, 35, 50.

370. No person admitted to practice in the courts of other States shall be admitted to practice in this court, unless he be a citizen of the United States, and a resident of this county, and until he shall have produced a certificate of the presiding or highest law judge of the court wherein the applicant last practiced, setting forth that he is of good moral character, and the

length of time he has practiced in said court, shall have been examined by the Board of Examiners, and shall produce a certificate signed by all the members of said board, stating that they had received satisfactory evidence of his good moral character and professional qualifications, including at least three years (two years, 6) diligent study, or practice of the law, and recommending his admission to the bar. 6, 7, 36, 38, 48.

371. A course of study in any law school of good repute shall be deemed equivalent to a like term of study in the office of an attorney or judge, 5, 7, 12, 13, 17, 38, 39, 41, 45, 50, but this shall in no event excuse the last year's clerkship in the office, 18, nor the necessity for passing a preliminary examination. 10, 33, 40.

372. Twelve months shall be allowed for a like or greater term of study spent in an established law school, 15, 19, 36, and two years to a graduate of the law schools of the University of Pennsylvania or Dickinson College, 23, or any reputable American law school. 30, 39, 43.

373. Students of a public law school shall be admitted, as in other cases, upon the diploma of the institution, if the same be within the State, on the certificate of the professor or principal. If the applicant is a graduate of any respectable college he may be admitted at any time after his arrival at the age of twenty-one, though his term of study may not exceed the period of two years. 42.

374. One who has taken a full collegiate course of study, may be admitted after two years study, if otherwise qualified, without regard to his age at the time of commencement (if at the time of his application he is twenty-one years of age, 16), but no credit shall be given for time spent in the study of the law, while the student is still prosecuting his preliminary education at any literary institution. 6, 37, 48.

375. A citizen of the United States, of full age, who has been graduated Bachelor of Laws by a respectable law school (of this State, 16) after a two years course of study, may be admitted upon the diploma of the institution (on examination as in other cases, 16) on the recommendation of the Board of Examiners, without registration or examination, 39, if over twenty-one years of age 4.

376. An applicant for admission who has been graduated

from any reputable college authorized to confer degrees, or from a reputable law school at which the course of instruction is not less than three years, may be admitted at any time after he has arrived at the age of twenty-one years, although he may not have been registered for a longer period than three years. 9, 12.

377. Those presenting diplomas from regular law schools, before entitled to a final examination, shall be required to be registered with some member of this bar or law judge, and shall study the law under his direction, and in his office, for not less than six months continuously, immediately before final examination, and as much longer as may be necessary, their age being considered, as will make their term of studies in the actual time spent in the law school and the office of the resident attorney, excluding vacations, equal to the term required by these rules for students who read entirely in the office of their preceptor during the three or two years fixed by the rule. 47.

378. Any graduate of the Dickinson School of Law may be admitted to practice law upon receiving the degree of Bachelor of Laws from said School, after a three years course of study: Provided, he shall have passed the preliminary examination required by the rules of court, and been registered in the prothonotary's office as a student at law one year before graduation. And provided further, that before applying for admission he has produced to the examining board a certificate from the dean of the faculty of said School that he has passed the full three years course of study herein required, the last year of which, at least, shall have been passed at said School, and has been examined by the authorities of said School in the science of law, and has been found by them to be qualified to practice; and also evidence of good moral character, as in other cases. 9.

379. Any citizen of the United States of full age, who shall have been graduated Bachelor of Laws by the University of Pennsylvania, after the course of study required in the University, may be admitted to practice as an attorney, if he shall have complied with the rule now in force as to the preliminary examination (registration and advertisement, 11), (and been registered for one year in the prothonotary's office as a student at law in said University by the dean of the law faculty thereof, 1), and shall have served a regular clerkship and resided for one year

in this county, and have studied altogether during the time required for other students. 8.

380. A graduate of the Law Department of the University of Pennsylvania, Harvard University, Yale University, or any other law school whose standing shall be satisfactory to the court, may, upon application to the Board of Examiners for examination, and upon passing a satisfactory examination duly certified by said Board, and on the production of his diploma, be admitted to practice in the several courts of this county: Provided, he shall have been registered as a law student with the prothonotary, at least one year prior to the application for his admission. 19.

381. Attending the Dickinson School of Law for a given period shall be deemed equivalent to serving a clerkship in the office of an attorney for a similar time. 9.

382. Any person presenting a diploma from any law school outside of the State, shall be subject to an examination the same as ordinary students at law, that is to say, to all the examinations, preliminary, Latin and final. 43.

383. Females may be admitted to the practice of the law on the same conditions as males. 13.

384. No foreigner shall be admitted until he shall have become a citizen of the United States and shall have resided therein five years (two years, 34), (four years, 42) next before his application. 16, 34, 42.

385. All motions for the general admission of any person to the bar (as a resident practitioner, 29) must be made by a member of the Board of Examiners, 5, 6, 7, 14, 23, 29, 33, 37, 40, 47, 48, or by authority thereof, and the papers upon which applications are made shall be filed in the prothonotary's office. 9, 10.

386. If the court be convinced by legal proof, or their own knowledge, that the person applying for admission, is not of the disposition and learning required by the Act of Assembly, such person shall be rejected. 8, 10, 12, 25, 33, 46, 49, 51.

387. In every case where one or more of the Board of Examiners refuses to make a favorable report on the person submitting himself for examination, the said Board shall file a report, signed by them all, that the said person had failed to meet the requirements of the rules of court, and the said Board could not

recommend him as a student at law, or for admission to the bar, as the case may be. The name or names of the members of the Board so refusing to make a favorable report under no circumstances shall be divulged by said Board, or any member thereof. 43.

388. All persons admitted to practice in the several courts of this district shall be required to pay an admission fee of ten dollars to the chairman of the law library of the county, to the courts of which he seeks admission, for the use of the law library. 43.

389. No person rejected by the Board of Examiners at (either the preliminary examination or 2, 3, 9, 12, 19, 47) the examination for admission to practice, shall be again presented for the period of one year (six months, 12) from the date of either of said examinations, 2, 3, 9, 19, 28, 35, 41, 47, and if failing on re-examination shall be considered as finally rejected. 12.

390. It shall be competent for the members of the bar for their own protection to adopt a tariff of fees for this county, any violation of which may be punished as a breach of faith towards the officers of the court. 27.

391. All persons applying for general admission to the bar shall be required to sign, before admission, the minimum fee bill of the respective counties. 43.

392. An attorney in good standing at any other court (of equal grade, 23) may be admitted to take part in the trial (or argument, 23, 24, 39) of any cause in this court in which he may be engaged, 6, 7, 10, 12, 15, 16, 17, 23, 24, 33, 38, 39, 46, 47, 48, 49, 50, 51 (provided like privileges are there extended to members of this bar, 14, 28, 35, 36) on the motion of any attorney of this court, who shall certify that he is a member of the bar in the county or State where he resides or practices. 21.

393. No person while holding the office of justice of the peace shall be allowed to practice as an attorney of this court. 47.

394. No prothonotary (deputy, 23) or clerk of any of the courts (and no register or recorder, 9, 20, 27, 28, 33, 35, 41, 51) may practice as an attorney in the several courts of this county during his continuance in office. 7, 9, 12, 20, 23, 28, 33, 35, 38, 41, 51. Nor shall any person be admitted as an attorney-at-law,



unless he apply with the bona fide intention to devote himself exclusively to the profession. 27.

395. No person who has not been practicing in the courts of this county, as an attorney, for the space of one year (two years, 7, 46, 49), unless prevented by sickness or absence (or prohibited by official position, 7), shall be allowed his privileges as an attorney, 11, 20, 22, 23, 24, 25, 26, 43, 44, 45, 46, 49; until he shall pass a satisfactory re-examination before the Board of Examiners and re-establish his qualifications, as now required upon an original examination for admission to the bar, or be relieved therefrom by the court or the president judge in vacation, on motion. Provided, that a member of the bar who, previous to his ceasing to practice his profession, was engaged in the active practice of the law in this county continuously for a period of ten years, and has since continued to reside within the county, shall not be required to conform to this rule, unless the court, in its discretion, shall require him to establish his qualifications to practice. 7.

396. No attorney, acting as counsel or clerk for the sheriff, shall give him any advice or counsel about, or in relation to, writs or other process in his hands, in which said attorney is interested, and about which there is dispute or contention of other parties with those whom said attorney represents, nor shall he do any act as clerk in relation thereto. 43.

397. In matters in which the county is directly or indirectly interested, or by possibility may be, the counsel for the commissioners can only make a motion, present a petition, and be heard for the commissioners as representing the county. And in like manner counsel for directors of the poor can only be heard in the interest of the almshouse as represented by the directors. 16.

398. It is the privilege and duty of counsel to try cases with true professional zeal, within the bounds of their oath of office, the limits of decorum, and the rules of professional ethics.

As instances of their rights they may :

Argue to the jury upon the facts in evidence, and facts as to which there is a conflict of evidence :

May comment on the bias and credibility of witnesses when the evidence warrants it :

May comment on the fact that a person shown to be an important witness for the adverse party, and known to be so and within reach, was not called :

May comment on the fact that a party in a civil suit when competent, and in reach, failed to appear in his own behalf :

May comment on the fact that he has failed to put in evidence a material document shown to be in his power ; and on the character of the adverse party, when it is in issue on the evidence, but only as assailed by evidence.

As instances wherein they transgress their privileges and abuse their high calling :

They may not state or assert as facts matters which are not in evidence :

May not push for an unjust verdict, or by powers of eloquence and excessive zeal try to convict an innocent man :

May not use language calculated to humiliate and degrade the adverse party, his counsel or witnesses, without foundation in the evidence.

These are named as instances, but not as covering the whole field of professional ethics, and are suggested to the careful consideration of the young gentlemen of the bar, who before many years will themselves become leaders ; and they will never regret the habit of trying cases solely on the issues joined. 16.

399. The prothonotary shall keep a book containing a list of the practicing attorneys of this court, with the date of their admission, to which list the names of those hereafter admitted shall be added, with the date of their admission. Such list shall govern the prothonotary in entering appearances and confessions of judgment, and no judgment shall be entered by confession of attorney, or appearance entered, where the attorney's name does not appear on said list. 17, 50.

400. No engagement of counsel in another court will be regarded, unless written notice thereof be placed in the hands of the prothonotary, or one of his clerks attending in court. 32.

401. No cause set for trial or argument shall be continued on account of the engagement or absence of counsel, unless the engagement be on public duty, or the absence arise from sickness. 9, 16.

402. Where two counsel are concerned on the same side the

absence of one of them shall, under no circumstances, be a reason for leaving open or continuing the cause. 16.

403. No attorney of this court shall, under any pretence whatever, pay or offer to pay, or counsel, advise, or be privy to the payment of any compensatory fees, fees for favors, extra services, or for unusual services not recognized by law, to any public officer of this county, or to any deputy or clerk to such officer, where the services rendered pertain to the office. 7.

404. The Board of Examiners shall, after complaints have been made to them in proper form, prosecute all attorneys for unprofessional conduct. 43.

405. Any attorney who shall hereafter be stricken from the rolls of any of the courts of this county, shall be thereby disqualified from practicing in all the other courts, unless the court making the order shall, in its decree, recommend that the punishment be limited to the said court. 1, 8, 20.

406. Any attorney who shall be convicted of an infamous or immoral offence (or an offence affecting his personal integrity, 14), shall be thereby disqualified from practicing as an attorney in these courts, 1, 8, 20, 21, and it shall be the duty of the Bar Association to take immediate action to have such disqualification enforced by proper order of the court. 14.

#### AUDITORS AND AUDITORS' REPORTS

[See Distribution.]

#### AWARDS

[See Arbitrations and Awards.]

#### BAIL

[See also §§ 117, 123, 148, 251, 252, 289, 300, 301, 543, 544, 1110, 1339 and 1561.]

407. No bail may be required (in any case in which bail is by law demandable, 12, 13, 15, 20, 30, 36, 37, 45, 48, 51) (in actions of trespass, 19, 23, vi et armis, for libel, slander, malicious prosecution, conspiracy or false imprisonment, 1, 2, 5, 7, 8, 10, 11, 14, 24, 26, 27, 32, 38, 39, 40, 41, 42, 43, 50 (or trover and conversion, 17, 18, 33, 35) or to recover unliquidated

damages, 16, 42), unless an affidavit of the cause of action (and of affiant's belief of the amount of damages sustained, 6, 30, 36, 37, 48) be made and filed before the issuing of the writ. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 48, 50, 51.

408. Bail shall not be required of any defendant in a *capias ad respondendum* (in more than \$200, 21, 39) (in more than \$300, 5, 14, 17) (in more than \$500, 1, 3, 6, 10, 16, 19, 23, 24, 25, 26, 30, 32, 37, 46, 49) (in more than \$600, in libel and slander, and more than \$1000 in any other action, 36) (in more than \$1000, 7, 8, 9, 11, 12, 13, 15, 18, 22, 27, 28, 33, 35, 38, 41, 43, 45, 48, 51, nor in slander over \$300, 50,) unless specially allowed by the court or one of the judges thereof, 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 32, 33, 35, 36, 37, 38, 39, 41, 43, 45, 46, 48, 49, 50, 51; and no such allowance will be granted unless the court or the judge be satisfied by proof, that the actual damage exceeds the sum fixed above, and that the party asking it will probably suffer injustice unless it be granted. 3, 17.

409. The actions where bail is of course, or where discretionary, shall be regulated by the books of practice. 25, 46, 49.

410. The affidavit to authorize the issuing of a *capias ad respondendum*, a special *capias ad respondendum*, or to hold to bail under the 85th section of the Act of 1836, relating to actions, may be made before the prothonotary of the court, or before any judge or justice of the peace of this State, or where the deponent resides in another State, before any judge, mayor, or chief magistrate of the place, and certified under the seal of the court, or the common or public seal of the city, town or place. 36.

411. No bail may be required in actions of slander, unless an affidavit be made and filed before the issuing of the writ, setting forth that the defendant is about to leave the State, or that the plaintiff has sustained special damage and stating fully the nature, character and amount thereof; and where special damage is sworn to, the defendant may not be required to give bail in more than double the amount of such special damage; provided, however, that the defendant may be held to bail in any action for slander by an order of the court, or a judge

thereof, fixing the amount of such bail, such order to be made only upon special cause shown and approved. 12, 51.

412. Where the plaintiff is absent, the affidavit to hold to bail may be made before a lawful magistrate, or public officer, agreeably to the custom of the country where it is made, and certified under some known and public seal, or before a consul or vice consul of the United States, and upon such affidavit the judge may at his discretion hold the defendant to bail. 16, 42.

413. In all cases (of contract, where the party may be held to bail, and of foreign attachment, 11, 13, 23, 34) where a positive affidavit of a real subsisting debt shall be made by the plaintiff in the cause, or by a third person, whose situation and knowledge shall enable him to make such affidavit, it shall be so far conclusive that no counter affidavit shall be admitted, but it shall be at the discretion of the court or judge to ask such further questions of the person making such affidavit, as may be deemed necessary to establish the cause of action, and fix the quantum of bail. 8, 11, 12, 13, 16, 20, 22, 23, 25, 26, 29, 34, 42, 43, 44, 45, 46, 49, 51.

414. Where an affidavit is not positive, but yet sufficient to convince the judge that there is a good cause of action, especially where it is founded on a bond, note or other paper, signed by the defendant, the judge may, at his discretion, hold the defendant to bail; and in cases where satisfaction cannot be otherwise obtained, counter affidavits may be admitted; so, nevertheless, that the merits of the cause be no further inquired into than shall be absolutely necessary to decide the question of bail. 8, 12, 16, 20, 25, 29, 42, 46, 49, 51.

415. In an action of trover and conversion commenced by *capias*, the affidavit to hold to bail shall set forth the circumstances under which the defendant has possessed himself of the goods, the particulars of which they consist, their value, and in what manner the defendant has converted them to his own use. 1, 8, 39.

416. A rule to show cause of action, and why the defendant should not be discharged on common bail (or the bail reduced, 6, 10, 30, 32, 33, 36, 37, 48) (or to dissolve a foreign attachment, 15, 21, 26, 43, 44, 47) (on entering his appearance to the action, 39) must be moved for within (six days, 1, 8, 15, 21, 23) (the first week of the term, 32) (four weeks, 39) (before the

end of the term, 10, 14, 22, 26, 33, 40, 43, 44, 47) (before the return day, if before a law judge at chambers, or at the next term, if before the court, 6, 30, 36, 37, 48) (after the return day of the process, 21, 26, 36, 43) and not afterwards (except in case of foreign attachment, in which case such rule may be moved for at any time before a general appearance is entered, or a judgment taken, 6, 30, 37, 48). Such rule may be heard and decided by a single judge at such time and place as he may appoint, 1, 8, 10, 14, 15, 22, 23, 39, 40, and under special circumstances after the time above fixed. 15, 32.

417. The manner of giving notice to the plaintiff to show cause of action (before a single judge, 2) shall be by a citation issued by the judge for that purpose, appointing a convenient time and place for the hearing, 2, 16, 20, 36, 42, 46, 49, according to the provisions of the Act of 13th June, 1836. 8, 12, 25, 51.

418. The judge or the court, at his or their discretion, will hear supplemental affidavits. 12, 16, 25, 42, 46, 49, 51.

419. In all cases where by existing laws bail must be taken or approved (by a single judge, 8, 25, 41, 46, 49) it shall be necessary for the party or his attorney offering such bail, to give reasonable notice thereof, (24 hours notice, 4, 16, 29) in writing, to the opposite party or his attorney, to afford him an opportunity to object thereto, 47; otherwise such bail taken or approved shall be void, 4, 8, 9, 12, 16, 20, 25, 29, 41, 46, 49, 51, and such notice shall specify the time and place of the application, and the name and place of residence of the person tendered as bail. 3.

420. All exceptions to bail or security shall be made in writing and filed with the prothonotary, and (where not otherwise provided by rule of court, or in the law authorizing the bail or security to be taken, 36) notice thereof in writing shall be given to the opposite party or his attorney (and to the sheriff, 1, 7, 8, 15, 32, 33) (within one day, 36) (within 48 hours, 1, 7, 8, 21, 32, 38, 39) (within four days, 33) (within 20 days, 6, 28, 30, 35, 37, 38) from the time of filing such exceptions.

421. Unless otherwise specially provided, bail or security given in any proceeding may be excepted to within twenty days; and upon exceptions filed, with an affidavit of the insufficiency of bail or security, a rule may be entered requiring the bail to justify, or new bail to be given before some judge, at a time

named therein, which shall be served on the opposite party or his attorney at least ten days before such time; and the judge shall, upon the hearing, make such order as justice may require: Provided, That the period for excepting, on an appeal from a justice of the peace, shall be computed from the first day of the term, to which the appeal is entered; and in every other proceeding, from the expiration of the time within which the bail or security is required to be given. 22.

422. Whenever in any proceedings in law or equity in these courts, it shall be alleged upon affidavit that the bail entered in such proceedings is insufficient, the court may after due notice to the parties interested, require additional bail to be entered. In default of compliance with such an order of the court, it shall be lawful for the party complaining of the insufficiency of such bail to proceed in the cause as if no bail had been entered therein; and proceedings in such case shall not release or discharge the original bail. 21.

423. When security or bail has been entered, added, substituted or justified, on notice, it shall be the duty of the prothonotary to file the notice with proof of service, and no exception shall afterwards be allowed. 16, 42.

424. Notice of the justification, addition or substitution of bail (or the entry of bail by one committed to prison, 14) must be given in writing to the plaintiff or his attorney at least (24 hours, 5, 6, 7, 14, 16, 26, 30, 36, 37, 38, 42, 48) (48 hours, 1, 8, 20, 21, 39) (four days, 15, 23, 32, 33) before the time designated in the notice, 14, 42, for such justification, addition or substitution, 5, 39, and the notice shall specify the name of the bail, his residence and occupation, and the property owned by him, which is offered as security, 1, 7, 8, 10, 15, 16, 20, 21, 23, 26, 32, 33, 36, 38, 40, unless done in open court or notice be waived. 6, 30, 37, 48.

425. Upon the return day of the rule to justify or perfect bail, if the party ruled fail to appear at the hour appointed, a minute of that fact shall be entered on the record, and thenceforth the bail shall be taken as inadequate and of no effect; if the party taking out the rule does not appear the rule shall be dismissed, and a second rule shall not issue without leave of court; if both parties appear the prothonotary shall decide on the sufficiency of the bail; either party may appeal from his

decision within five days thereafter; the appeal shall be placed on the argument list, and shall be liable to call on five days notice as in other cases on that list. 3.

426. If a defendant committed to prison by virtue of a *capias ad respondendum*, or surrendered by his bail, enters special bail to the action, by recognizance on the record, acknowledged before the judge or prothonotary, conditioned as in the sheriff's bail bond, the plaintiff may file exceptions within fourteen days after written notice from the defendant of the putting in of bail, with their names and places of residence. And the bail so entered may justify, or new bail be added or substituted and justify, within fourteen days after plaintiff's notice to the defendant or his attorney of exceptions filed. 39.

427. When the party has been committed, and enters special bail before the first day of the term next after the return day of the writ, the plaintiff may except to the sufficiency of the bail within the first four days of the term; whereupon the defendant shall, within ten days after notice of the exceptions, justify the bail before the prothonotary or a judge of the court, giving twenty-four hours notice of the time and place of such justification. If in such case special bail be not entered before the first day of the term next after the return day of the writ, it shall not be afterwards taken without twenty-four hours notice. 16, 42.

428. In all cases where bail is taken by the prothonotary (or upon appeal from the judgment of a justice of the peace, 11, 13, 18, 20, 23, 24, 25, 26, 30, 34, 37, 43, 44, 45, 46, 47, 48, 49) (or for stay of execution upon appeal from an award of arbitrators, or for appearance in foreign attachment, 11, 13, 18, 23, 24, 26, 34, 37, 43, 44, 45, 47, 48) if the opposite party shall deem the bail insufficient, he may except to the sufficiency thereof at any time within (fifteen days, 12, 51) (twenty days, 11, 13, 18, 26, 30, 34, 37, 43, 44, 45, 47, 48) (thirty days, 8, 20, 25, 29, 46, 49) after the entry of such bail before the prothonotary (or within (ten days, 23) (twenty days, 4, 11, 13, 26, 30, 37, 43, 45) (thirty days, 20, 46, 49) after the first day of the term to which the appeal is entered) of which he shall give notice in writing to the party entering the bail, who shall thereupon within (five days, 3) (ten days, 4, 8, 9, 11, 12, 13, 18, 19, 20, 23, 26, 28, 30, 34, 35, 41, 43, 44, 45, 46, 47, 48, 49, 51) after



notice (or at the next session of the court, or before one of the judges thereof at a time and place to be fixed by the parties giving the notice, 20, 29) justify the security so given, or add new security and justify as aforesaid, 3, (giving the opposite party (reasonable notice, 9, 28, 41) (one days notice, 27, 51,) (three days notice, 19,) (four days notice, 4, 18, 34, 43, 44, 47) (five days notice, 23) of the time and place of so doing; and in default thereof the security shall be deemed insufficient, and the party excepting may proceed as if no security had been given. 4, 9, 18, 19, 20, 23, 24, 26, 27, 28, 29, 30, 34, 35, 37, 41, 43, 44, 46, 47, 48, 49. (Where new bail is to be taken it must be done before the judge at the time of hearing, or before the prothonotary. 8, 11, 12, 13, 20, 25, 45, 51.) Such notices of exceptions to the sufficiency of the bail shall contain so much of the substance of this rule as will inform the opposite party what he is required to do, and of the consequence of his failure to comply therewith. 43.

429. Exceptions to bail taken by a sheriff upon a *capias ad respondendum*, or special *capias ad respondendum*, shall be regulated by the provisions of the Act of 13th June, 1836, 20, 25, 46, 47, 49, of the taking of which he shall give notice to the plaintiff, or his attorney, within five days thereafter. 9, 41.

430. Within ten days after notice to the sheriff the defendant may justify, or substitute other sufficient bail, giving the plaintiff or his attorney one days notice of the time and place of doing so, and in case of failure so to do the sheriff may be ruled to bring in the body of the defendant within a fixed period, and upon his failure so to do, he shall be responsible for the ultimate sufficiency of the bail taken; but if no exception to the bail be taken, and notice thereof given to the sheriff, within the time fixed, or after the return day of the writ, the right of the plaintiff so to do shall be considered waived. 28, 30, 35, 36, 37, 48.

431. The notice required by Section 13, Act 13th June, 1836, relating to commencement of actions, to be given by the sheriff to the plaintiff, his agent or attorney, of the names and places of residence of bail taken by him for a defendant's appearance in *capias*, shall be given on or before the return day of the writ. 4, 11, 13, 14, 18, 22, 23, 26, 34, 43, 44, 45.

432. When the bond taken by the sheriff shall be returned and its import and the names of the bail entered by the pro-

thonotary upon the docket, it shall stand in all respects as special bail entered before the prothonotary, 22, and in case of forfeiture may be proceeded upon in like manner. 11, 13, 14, 18, 23, 26, 34, 43, 44, 45.

433. The bail so taken by the sheriff may be excepted to by the plaintiff, his agent or attorney, at any time within (ten days, 23,) (twenty days, 4, 6, 10, 11, 13, 14, 18, 26, 34, 40, 43, 44, 45), after the return day of the writ, and notice to him by the sheriff (such exception may be taken in open court or before a judge, whereupon a citation may be had appointing a convenient time and place of hearing, of which due notice shall be given to the defendant, his agent or attorney, 11, 13, 14, 18, 26, 34, 43, 44, 45), (the exception must be made in writing and filed with the prothonotary and notice thereof in writing shall be given within 48 hours (four days, 10, 40) from the filing thereof, to the sheriff and the defendant, 10, if residing within the county, or if not, to his agent or attorney, 23, 40). Upon hearing (which may be had before the court or a judge thereof at chambers at the instance of either party, upon 24 hours written notice to the opposing party, and the sheriff, 23) the bail shall justify or new bail be added or substituted, as the court or judge may direct, and new bail, either in addition or substitution, may be taken before the court or judge at the time of hearing (or before the prothonotary, 11, 14, 18, 34, 39). If the defendant, or bail, or some one of them, do not appear and justify, or give new bail according to the requisition of the court or judge, a record to that effect shall be made and filed. A rule may thereupon be had upon the sheriff to bring in the body of the defendant; in answer to which rule the sheriff may have special bail entered, or bring in the body of the defendant; or if he omit to do either (upon the return day of the rule, 4) by the next succeeding term after the rule was taken, he shall be in contempt and subject to attachment. 6. And the said proceedings shall in no way impair or affect the validity of the bond taken, either as regards the plaintiff or the sheriff, nor shall it release the liability of the sheriff under the provisions of the 16th section of the Act of 13th June, 1836. But an omission to take a rule on the sheriff to bring in the body, until the end of the next succeeding regular term after the order of the court or judge for new bail, or to justify, shall

be deemed a waiver of the objections to the bail. 4, 11, 13, 14, 18, 23, 26, 34, 43, 44, 45.

434. Upon the return of the attachment against the sheriff, or without it if he voluntarily appears, the court may take his recognizance with or without security, guaranteeing the solvency of the bail and sufficiency of the bond taken, or make such other order as the justice of the case may require. 4, 11, 13, 14, 23, 26, 34, 43, 44, 45.

435. After filing the necessary affidavit, a rule to find additional bail under the 26th section of the Act of 1836 relating to the commencement of actions, shall issue as of course, and the practice thereupon shall be according to the provisions of that Act; but the court, or the judge thereof in vacation, may upon good cause shown by the plaintiff or defendant, by special order, lessen or enlarge the time of notice to the defendant to find the bail. 36.

436. Bail for stay of execution shall not be allowed except on a motion day, unless reasonable notice is given to the plaintiff or his attorney, when either is resident in the county, or one or the other is present in court or before the judge. Exception may be taken to the sufficiency of the bail within forty days after the entry of the judgment; and defendant shall within four days after notice of such exception, justify the bail, or enter other sufficient bail, giving reasonable notice of time and place, in default whereof no further stay shall be allowed, unless specially provided for by law. 28.

437. Exceptions to bail for stay of execution may be taken at any time within sixty days after the entry thereof, unless the defendant shall have given to the plaintiff or his attorney, three days previous notice of the time when bail would be offered, with the name of the person or persons to be offered as bail. 4.

438. Exceptions may be taken to the sufficiency of the security to obtain a stay of execution at the time it is offered, of which time one days previous notice shall have been given. If no exception be taken, the prothonotary, on due proof of the notice given, shall mark the security "approved by the court." 36.

439. Exceptions may be taken to the sufficiency of security for stay of execution within four days (ten days, 18, 33) (twenty

days, 10, 40) after the expiration of thirty days from the entry of the judgment and the defendant within (four days, 10, 18, 33, 40) (seven days, 39) (eight days, 1) after notice of exception shall justify the bail before the judge, 40, (prothonotary, 1) giving 24 hours notice (reasonable notice of the time and place, 33) of justification, 39 (subject to an appeal to a judge, 1) in default of which (the writ shall issue, 10) no further stay shall be allowed unless specially provided for by law. 18.

440. In all cases where an application is made to a judge to approve of bail for a stay of execution, (reasonable, 12) notice of the application, and the name of the person or persons intended to be offered as bail, and of the time when it will be presented to the judge for approval, shall be given to the adverse party, his agent or attorney, 12, 51, at least (24 hours, 8, 18, 21, 25, 37, 42, 46, 49) (five days, 20) before the same is acted on, 8, 20, 25, 37, 42, 46, 49 (and this shall also apply to cases of foreign attachment, 2; but three hours notice will be sufficient if the party or his attorney resides at the county seat. 18.

441. The security for stay of execution for the thirty days required by the 4th section of the "Act relating to Executions," shall be approved by the court or a judge thereof. 15, 32.

442. Bail for stay of execution shall be effectual for that purpose when the plaintiff or his attorney is present at the taking thereof, and departs without filing exceptions thereto; or when written notice of such entry is given to the plaintiff or his attorney and no exceptions are filed within (one day, 5, 17, 50) (four days, 14) (five days, 19, 27) thereafter. If exceptions are filed the defendant shall within ten days (twenty days, 27) justify the security before the court, or a judge thereof in vacation (the commissioner of bail, 14) giving (24 hours, 5, 14, 17, 50) (three days, 19) notice to the plaintiff or his attorney in writing, 5, 14, 19, 27, of the time and of the names of the sureties proposed. The presence of the plaintiff or his attorney at the entry of bail, or the proof of notice that it has been entered, shall be noted on the record, and as soon as the time for filing exceptions has elapsed, or the exceptions, if any, have been disposed of, the prothonotary shall enter an order that the execution be stayed and give a certificate thereof. 5, 14, 17, 50.

443. Whenever execution is issued more than seven days from the rendition of judgment, and the defendant is entitled to

a stay of execution upon the entry of security under the Act relating to Executions, passed the 16th day of June, 1836, the execution shall be set aside upon the entry of such security, and the payment by the defendant of the costs of the execution: Provided, the money has not been made on such execution. 1, 8.

444. Suggestion of freehold for stay of execution, shall be effectual for that purpose only when the same is in writing, and has attached thereto a description of the premises, with a reference to the title and record thereof (if any) under which the defendant holds, with an affidavit by him, his agent or attorney, that he is possessed thereof in fee simple, that the same is within the county, worth at least the amount of the judgment, or the sum for which the plaintiff may be entitled to have execution thereof, clear of all encumbrances. And upon being filed, the same shall be governed by the rules in relation to bail for stay of execution, relative to notice, exceptions, etc., so far as the same may be applicable. 5, 11, 17, 26, 35, 45.

445. In proceedings to hold to bail in real actions, under the 85th section of the Act of 1836, relative to the commencement of actions, the plaintiff shall file an affidavit setting forth the necessary facts when he applies for the rule, which shall then be of course, and may issue with the writ or afterwards, and the bail required shall be marked on the rule. The defendant shall within ten days after service of the rule give bond to the sheriff, make deposit, or enter special bail in the prothonotary's office, in the manner now practiced and allowed by law in personal actions. If he shall fail so to do, on proof of default before the prothonotary, an attachment shall issue as of course, on which he shall be arrested and held until he complies, or is otherwise duly discharged according to law: Provided, that the right and mode of proceeding to show cause of action shall exist as in personal actions; and also as to excepting to, justifying, adding to and substituting bail. 36.

446. The approval by a judge in vacation of any bond, bail or surety, shall have the same effect as if by the court in term time. 17, 36, 50.

447. Exceptions for insolvency of the bail arising after the approval thereof, may be taken by application to the court, or a judge thereof, for leave so to do. 4.

448. All sureties offered in any case must reside within this county, unless otherwise specially ordered by the court. 2.

449. The filing of a declaration or other pleading, or rule upon the defendant to plead (or taking judgment by default, 5, 36) shall not be a waiver of special bail. 5, 13, 26, 34, 36.

450. The prothonotary (and any duly appointed and acting deputy, 6, 8, 9, 12, 21, 28, 30, 35, 37, 48, 51) shall be Commissioners of Bail, before whom bail shall be taken and justified or substituted, in any case where the approval of a judge or court is not required (except bail for stay of execution, 19) (including bail for stay of execution, for costs and for appeal, and any additional substitution or renewal of bail, 17, 36, 50), and with power to administer all requisite oaths, and take the necessary recognizances or bonds. 5, 6, 8, 9, 10, 12, 16, 17, 19, 21, 27, 28, 35, 36, 37, 40, 41, 42, 48, 50, 51. Special commissioners to take bail in civil suits may be appointed by the court if reason for so doing is shown. 30.

451. No attorney (of this or any other court, 7, 11, 16, 26, 42, 43), sheriff or sheriff's officer (prothonotary, clerk, 6, 8, 9, 10, 11, 12, 13, 14, 17, 19, 20, 21, 22, 24, 25, 26, 28, 29, 30, 33, 34, 35, 36, 37, 40, 41, 43, 44, 45, 46, 48, 49, 50, 51) (bailiff, 1, 15, 16, 23, 32, 39, 42) (or other person concerned in the execution of process, 1, 4, 7, 8, 11, 12, 15, 16, 22, 23, 24, 25, 26, 29, 32, 33, 34, 39, 42, 43, 46, 47, 49, 51) (register or sheriff, or their deputies, 9) shall be permitted or suffered to become bail in any action or suit, unless by leave of the court for special cause shown, 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 (unless personally interested. 3, 19, 20). Leave will be granted only when its refusal would work manifest and grievous injury to the defendant, which cannot be otherwise avoided. 23.

452. Special bail sued by scire facias, or in assumpsit on bond or recognizance, may surrender the principal at any time before or within four days (eight days, 16, 42) (ten days, 15, 32) after the first day of the term to which the process is returnable (or within fourteen days after service of the writ, if it be not served ten days before the return day, 22); but the bail shall pay the costs of the suit against them, 10, 11, 13, 15, 16, 23, 24, 26, 32, 33, 34, 40, 42, 43, 44, 45, 47 (if the surrender is

made after it issues. 4). But where the process is returnable on the second return day of the term, the surrender may be made on the return day or within three days thereafter; and if done in vacation, shall be done on the order of the judge or of the Commissioner of Bail. 36.

453. "Security" ordered by the court shall in all cases require a bond or recognizance, as the case may be, in the sum named, conditioned according to law, and with two or more sureties, to be approved by the court or a judge in vacation. 17, 43, 50.

454. In all cases where the court is required to approve sureties the application shall be accompanied by the affidavit of the surety, setting out the extent and character of his estate, and the probable value of the same over and above all liens and his other liabilities, 10, 15, 17, 50, and exemptions. 5, 14, 40.

455. Whenever any bond is offered to the court or a judge thereof for approval, there shall be annexed to the same the affidavit of some disinterested person, stating that he is well acquainted with the financial standing of the person or persons executing the bond as surety or sureties, and that he knows him or them to be worth, in real estate situate within the county, over and above encumbrances, the sum of \$ . . . . .: Provided, that there may be several affidavits as to each of the several sureties, and that this section shall not preclude the court from receiving in special cases, and for proper reasons, the bonds of persons owning real estate outside of the county, under similar affidavits. 23.

456. It is hereby ordered that whenever the sufficiency of a bond, recognizance or other instrument of writing needs to be approved by the court, each surety therein must make oath or affirmation in writing (to be endorsed thereon, or appended thereto) to one or other of the following facts:

(a) Either that he is worth the whole of the penal sum named in such instrument over and above all his debts and the debtor's exemption;

(b) Or that he is worth a specified proportion thereof over and above all his debts and the debtor's exemption. If this be the fact sworn to, the aggregate of the proportions specified by the sureties must equal the penal sum named in such instrument.

No affidavit will be required if the sufficiency of the bond

or other instrument is certified to by a judge of the court of record either in this State or elsewhere.

If a corporation is offered as surety, or if under any statute it offers its own bond without further security, the affidavit may be made either by its president, its treasurer, or its trust officer. 12.

457. In all cases where surety is required to be approved by a judge or the prothonotary, the party presenting such surety for approval shall at the same time present to the judge or the prothonotary an affidavit signed by the surety offered and duly sworn or affirmed, upon a blank to be furnished by the prothonotary in the following form :

..... County, ss.:

John Doe, being about to become surety in the above entitled case, and being duly sworn according to law, deposes and says:

I. I have real estate in the said County of.....  
in my own right and name in fee simple, of the cash value,  
over and above all encumbrances thereon, of not less than  
\$..... Said real estate consists of.....

II. I have personal property worth not less than \$.....

III. I have other property, to wit,.....

IV. The encumbrances against the said real estate amounts  
to \$.....

V. I am worth over and above all debts and demands not  
less than \$.....

Sworn to and subscribed before }  
me this..... day of } .....  
....., A. D. 189 . }

Notice of this application for approval of surety was  
given to the plaintiff's attorney by writing on the.....  
day of....., A. D. 189 . 39, 45.



458. (In the 1st District the affidavit must be as follows:)

.....	}	C. P. No. ....
vs.		..... Term, 18
		No. ....
.....		Surety for .....
		Amount, \$ .....

.....being about to become surety in the above entitled case, and being duly ..... according to law, deposes and says:

1st. I reside at ..... and my occupation is .....

2d. I am the owner of real estate in the County of ....., as follows:

3d. The value of the said real estate is ..... and the rent ..... It is assessed for the purposes of taxation, at the value of ..... and is so assessed in my name.

4th. There are ..... incumbrances against the said real estate, as follows:

..... and there is no other judgment binding the said land, or mortgage, ground-rent or other incumbrance of any kind affecting the same except those above named.

5th. The title to the said real estate is in my own name, and the same is not subject to any trust.

6th. I obtained the said real estate in ..... by ..... from ..... and my deed therefor is recorded.

7th. There are ..... judgments against me .....

8th. I am not surety in any other case, or for any public officer, .....

.....and subscribed, this.....  
day of .....18 , before me.

*N. B.—This affidavit must be sworn to before the Prothonotary  
or a Commissioner of Bail appointed by him.*

Notice of this application for approval of surety was given to the ..... by writing on the.....  
day of .....18

The above-named .....  
is approved as Surety in the above case.

And notice in writing of the time and place of the application stating the name of the surety to be offered, his residence and occupation, and the property of which he is possessed, shall be given to the opposite party forty-eight hours before the application, in all cases except attachments under the Act of 1869, domestic and foreign attachments, writs of replevin not between landlord and tenant for goods distrained for rent, and special injunctions. 1.

#### BILLS OF DISCOVERY

459. Bills of discovery in aid of proceedings at law (shall be filed in the court in which the action at law is pending, 1) and if the defendant in such bill be a non-resident, the complainant may apply by affidavit setting forth the place of residence, or supposed residence of the defendant, and thereupon he shall be entitled to a rule to show cause why the defendant should not, within a time to be fixed at the hearing of the rule, answer the bill, or in default thereof, that an order be made in the proceedings at law for a judgment of non-suit in case the plaintiff at law shall be defendant in the bill, or that the plaintiff may read

the bill in evidence on the trial of the cause, in case the defendant at law is also defendant in the bill. 1, 8, 23, 39.

460. Service of the rule may be made on the attorney of record in the proceeding at law, and a copy of the affidavits shall be served, together with the rule; and if at the expiration of the time allowed for putting in an answer, no answer shall be filed, or no sufficient answer, the rule for a non-suit, or for the admission of the allegations, shall be made absolute, unless reasons to the contrary be then shown. 1, 8, 23, 39.

461. Upon filing a bill of discovery, the plaintiff or petitioner may apply to the court or a judge to award a scire facias, returnable at a time to be appointed for the purpose, or he may apply to the prothonotary, who shall issue the writ as of course, returnable on the first or second return days of the term as the case may require, as in other writs of scire facias. At the time of issuing the scire facias, or afterwards, the petitioner may file interrogatories, and have a rule of course upon the respondents to answer (on or before the fourth day of the term to which the scire facias is returnable, or at any subsequent time named, not less than ten days after the service of the rule, 36), and the proceedings shall be as directed in the rule relating to attachments. 27.

462. If the interrogatories filed contain illegal, impertinent or scandalous matter, the respondents may file exceptions thereto, specifying the same, and apply to the judge in vacation, or the court in term time, to expunge the same; giving to the plaintiff or his attorney reasonable notice in writing by a citation from the judge or court, of the time and place of hearing; and the judge or court on hearing shall make such order thereon as shall appear to be lawful and proper. 36.

463. If the plaintiff excepts to the answer, he shall file his exceptions, specifying the objections, and the respondent may within (five days, 28, 33, 35, 41), (ten days, 27, 36) thereafter amend or file another answer (and so as often as exceptions may be made, 36). If the respondent does not amend, or if he put in a new answer, a rule may be granted to show cause why the petition should not be taken as confessed, and the court on hearing, if the answer be deemed insufficient, may order an answer forthwith in open court, or on reasonable notice, or that the bill be taken pro confesso. 27, 28, 33, 35, 36, 41.

464. Two or more persons holding different portions of the defendant's property by distinct titles may be joined with the defendant in one bill. 27, 28, 33, 35, 36, 41.

### BILLS OF EXCEPTIONS

465. No bill of exceptions to the admission or rejection of evidence will be signed unless the court has been distinctly asked to note an exception at the time of the decision, 4, 5, 10, 14, 15, 16, 17, 27, 30, 33, 36, 40, 50, and any party making an offer of evidence during the trial, that is objected to, shall be bound to put the same in writing if requested to do so by the court or the opposing counsel. 6, 37, 48.

466. Exceptions to the charge of the court to the jury, must be made (before the jury have withdrawn to consider their verdict, 1, 2, 8) (before the verdict is received, 7, 15, 16, 38, 40, 43) (immediately after the jury retire, 4, 10, 16, 32, 33, 37, 40, 48) (and shall be noted by the stenographer, 30) and before the rendition of the verdict shall be reduced to writing by the party excepting, 5, 6, 14, 17, 19, 28, 33, 35, 36, 50, in which the points or matters of law excepted to shall be distinctly and clearly specified, 10, 27, and those only will be allowed in the bill of exceptions. 6. (If no such specification be made, a general exception will be taken to apply to the assent or dissent to the points, if any, and if none, will be considered waived. 28, 35). No exception to the whole of the charge will be allowed by the court. 1, 5, 6, 8, 14, 15, 16, 17, 27, 28, 32, 33, 35, 36, 37, 40, 50.

467. Bills of exceptions to the admission or rejection of evidence, or witnesses, during trial, must be drawn out and prepared by the counsel at whose request they were sealed, and submitted to the counsel of the opposite party, and to the judge who tried the case, for correction and approval. 6.

468. In every case a bill of exceptions must be prepared in form and presented to the trial judge within ten days after the verdict, 1 (three weeks, 50), (otherwise the exceptions will be considered waived and the bill will not be sealed thereafter. 27, 50). (If relating to the evidence offered at the trial it shall be accompanied by so much of the preceding evidence as will enable the matter to be clearly understood, 36) or final disposi-

tion of the case on a motion for a new trial, arrest of judgment, or motion for judgment on points reserved. 32.

469. In case of a non-suit under the seventh section of the Act of 11th March, 1836, the bill of exceptions shall be presented within ten days from the entry of the non-suit. 32. In case of reserved points, the party against whom the verdict is entered shall prepare and present his bill within ten days from the verdict; but in case a verdict shall be set aside or reduced upon a reserved point, the party against whom such decision is made, shall prepare and present his bill of exceptions within ten days from such order. 1.

470. Before presenting the bill to the judge for signature, the same, or a copy of it, shall be handed to the counsel of the opposite party for his inspection, who shall note thereon any objection he may have, and return it in two days afterwards. The objections shall be delivered to the judge along with the bill. 27, 36.

471. Every bill of exceptions must be settled by the trial judge (within (ten days, 32) (20 days, 1) after presentation) (within two months after verdict unless upon the assent and request of counsel on both sides, 15) (if relating to evidence within three weeks after judgment, 17) or it will be considered waived. 15, 17. Forty-eight hours notice, and a copy of the bill must be served on the opposite party prior to the time of settling the bill. 1, 32.

### BILLS OF PARTICULARS

[See also §§ 109, 276-278, 877, 957 and 958]

472. In assumpsit and trespass and in appeals from justices, the plaintiff if he has filed a statement of claim, and the defendant if he has filed a statement of defence in answer to a statement of claim, shall not be ruled to file a bill of particulars except for cause shown. In all other cases a rule may be entered, of course, on either party to any action to furnish a bill of particulars. 43.

473. If a plaintiff on filing a statement of his claim under the rules relating to affidavits of defence, shall wish to avoid being ruled to furnish a bill of particulars, he shall endorse on his statement the words "bill of particulars," and he shall not

thereafter be required to furnish an additional bill. The same rule *mutatis mutandis* shall apply to defendants. 9, 21, 27, 28, 35, 36, 41.

474. At any time after the entry of an appearance (to a summons, or of special bail justified or not excepted to, 13, 23) (and in appeals from the judgments of aldermen and justices of the peace, 7, 23, 38) (and before issue joined, 5, 11) (and before the cause is upon the issue list, 13) (and before pleading in bar, 22) the defendant may call for a bill of particulars, and until it is furnished proceedings shall stay. 5, 6, 7, 13, 14, 38, 48. If the same be not furnished before the second Monday of the next term, or the time be enlarged, the defendant shall on motion be entitled to a judgment of non pros, 22, but this rule shall not apply to divorce cases. 11.

475. In all actions where the declaration or statement fails to set forth a full and specific averment of the facts upon which recovery is sought, the defendant may either demur, or may enter a rule in the rule book on the plaintiff to file a bill of particulars of the grounds of his action; and on failure of the plaintiff to comply with such rule for twenty days after service thereof, the court will enter judgment of non-suit. 9.

476. In all actions of assumpsit, on simple contract where the declaration is so general in its terms as not to disclose the precise nature of the demand, the plaintiff shall file, with his declaration, a bill of particulars, giving dates, amounts, etc., to the items of the claim, with reasonable minuteness; and if the action be brought on a book account, a copy of the book entries shall be filed; and the plaintiff shall not be permitted to give evidence on the trial of any matter not mentioned in his bill of particulars, or fully set forth in his declaration. 16, 33, 40, 42.

477. In all actions where the declaration or pleas are in general terms, either party, by leave of court, may have a rule upon the opposite party to furnish a bill of particulars of the cause of action, or the grounds of defence thereto, within ten days from the service of notice upon the party, or his attorney of record. 29.

478. In all cases of contract (except where the contract is particularly described, and the breaches specifically and definitely set forth in the statement, 28, 36) (the defendant, 28)

(either party, 36, 41) may enter a rule, as of course, for a bill of particulars. 28, 36, 41.

479. A rule may be entered of course, upon either party to an action, to furnish a bill of particulars, 27, upon demand made before the plea or replication is filed. 21.

480. In actions of assumpsit and trespass, the plaintiff may, at any time before the cause is put upon the trial list, and thereafter by leave of court, rule the defendant to furnish him with a bill of particulars of his defence. And in default thereof for twenty days after notice, judgment may be entered against the defendant on proof of notice and default; and on the trial the defendant shall be confined to the defence he may have set forth in answer to the rule, unless an amendment be allowed by the court for cause shown. 5.

481. In all actions upon application of the plaintiff for the production of a statement of the precise and particular grounds of defence, within thirty days, the court may, in its discretion, direct it, under penalty of a judgment against the defendant. 23.

482. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice or written proceeding requiring particulars, may in all cases be ordered upon such terms as may be just; the particulars shall be verified by affidavit; persons acting in a representative capacity, and heirs required to show cause why execution for the debt of their decedent should not be levied of their lands, may be excused from furnishing particulars upon affidavit that they are unable to do so; application for particulars shall be by petition setting forth the ground. 3.

483. The court may, in its discretion, on motion and cause shown, order a bill of particulars in an action of tort. 32.

484. The defendant shall not be ruled to furnish a bill of particulars until the plaintiff has filed a declaration or statement of claim. 21, 27, 36, 43.

485. When a general or short plea is entered, or any plea not specifically stating the items of the defence, in any action whatever, the plaintiff may enter a rule upon the defendant to file a bill of particulars of his defence, and on failure to comply with such rule for 20 days after notice thereof, no evidence shall be admitted of fraud, want of consideration, particular pay-

ments, set-off, defalcation, or other special matter of defence. 9, 28, 32, 35, 41.

486. When any cause is at issue no call shall be made upon the plaintiff for a bill of particulars less than (14 days before the first day of the term, 36) (three weeks, 7) (thirty days, 9) (20 days before the first day of the week in which the cause is set down for trial, 9, 23) (on the plaintiff 30 days and on the defendant 20 days before the first day of the term. 28, 35, 41.)

487. If the plaintiff in any suit in which the defendant is entitled to a bill of particulars do not furnish the same within (ten days, on 15 days notice to plaintiff or his attorney of record, 13) (fifteen days, 14) (twenty days, 5, 6, 28, 35) (sixty days, 38) (three months, 1, 7, 8, 23) the court (the prothonotary 5, 7, 13, 23) may order a non suit upon motion of the defendant and no sufficient cause shown to the contrary, 1, 5, 6, 8, 13, 14, 28, 35, 41, unless the bill be furnished before the expiration of ten days on notice. 7, 23, 38.

488. Upon failure of either party to comply with the rule for a bill of particulars for (fourteen days, 36) (fifteen days, 21, 43) (twenty days, 27, 48) (thirty days, 11) after service thereof, (the court, 36) (the prothonotary, 11, 43, 48) may enter judgment against the party in default. 11, 21, 27, 36, 43, 48.

489. The plaintiff's bill of particulars shall contain a full, direct and concise statement of his cause of action (with items and dates as far as practicable, 28, 35) and the defendants a similar statement of the grounds of defence. 9, 21, 27, 28, 35, 36, 41, 43.

490. If the defendant rule the plaintiff to furnish a bill of particulars after his declaration or statement of claim has been filed, it shall be deemed a waiver of all substantial as well as formal defects in the declaration or statement of claim; and if the rule be entered before the filing of a declaration or statement of claim, the bill of particulars furnished in pursuance of such rule shall be deemed a substitute for the declaration or statement of claim for all purposes. 27, 41, 43.

491. On the trial neither party shall be permitted to give evidence of facts outside of his bill of particulars. 9. Either party, however, in the discretion of the court, will be permitted to amend his bill, provided that if the motion to amend is made after the cause is on the list for trial, and the opposite party



shall allege surprise whereby the cause is continued, the costs of the term shall be paid by the party asking permission to amend. 21, 27, 28, 35, 36, 41, 43.

#### **BOARD OF EXAMINERS**

[See Attorneys.]

#### **BONDS GIVEN AT TREASURER'S SALES**

[See Execution.]

#### **BOOKS AND WRITINGS**

[See also §§ 1048, 1049 and 1367]

492. A motion to produce books and writings containing evidence pertinent to the issue, in the possession or power of an opposite party, under the Act of 27th February, 1798, must be made before the term at which the cause is down for trial (otherwise no order will be made for their production, unless good cause is shown for the delay in making the said motion, 17, 50) unless after discovered; and the proceeding thereupon shall be by rule to show cause, of which the opposite party or his attorney shall have at least ten days notice before hearing. If the rule be made absolute, the books or writings set forth in the affidavit shall be produced on or before the trial, or the failure so to do satisfactorily accounted for; otherwise the jury if sworn will be discharged, and the proper judgment rendered, or on sufficient cause shown, the cause continued and further order made, or time for their production allowed. 27, 28, 33, 35, 36.

493. Where the books or writings are not known to the party to exist, or after diligent inquiry, to be in the possession or power of the opposite party, in time to make the motion at a term previous to trial; or where there has not been sufficient time to hear the rule to show cause, without default of the party obtaining the same, it will be deemed sufficient ground for a continuance of the cause, and such order as to costs made as the court deems just. 28, 33, 35, 36.

494. The affidavit of the party or other person to ground

a rule to show cause upon, when not positive, shall set forth such facts and circumstances as induce a reasonable belief of the existence of the book or writing, and of its being in the possession or power of the other party ; and the affidavit of the opposite party or other person in denial thereof, shall fully set forth all that he may be presumed to know, or the reasons why he does not ; otherwise the rule will be refused on the one hand, or enforced on the other. 28, 33, 35, 36.

495. Where a party desires to take judgment for a failure of the opposite party to produce books or writings which contain evidence pertinent to the issue, under the Act of 27th February, 1798, he must strictly comply with the Act of Assembly ; the notice shall specify with reasonable certainty the books or papers required, and shall state that on a failure to produce the same, the court will be moved to award a non-suit or a judgment, as the case may be, and a rule to show cause why judgment should not be entered, must be asked for before offering any evidence in the case. 47.

496. In order to entitle a party to judgment under the Act of Assembly on failure to produce books or writings, an order of the court must be obtained upon the return of a rule to show cause previous to the trial. 7, 10, 15, 16, 20, 24, 25, 32, 40, 42, 46, 49. And the court may also in its discretion, at the time of granting such order, make a further order allowing the party applying for the same to have inspection of the books and papers, or any of them, at some convenient time and place before trial, in the presence of the adverse party, and to have extracts or copies thereof made at his own expense, by some person to be designated by the party having said books and papers in possession ; guarding this privilege by such restrictions as may be necessary to prevent its being abused. 7, 38.

497. In every case where a judgment is rendered because of the non-production of a book or writing, requiring damages to be assessed, the court may at the time make an order in the nature of a writ of inquiry to charge the jury at the same or the next court to inquire of the damages and costs of the plaintiff ; and, upon the same being found, thereupon immediately enter final judgment. 28, 33, 35, 36.

498. In no case shall a judgment of non-suit, or by default, be deemed to extend beyond that part of the plaintiff's demand,

or the defendant's defence, to which the books or papers are alleged to apply. 28, 33, 35, 36.

499. In actions founded on a written instrument or book account, whether a copy has been filed or not, if the defendant will make affidavit to facts showing that he cannot safely make an affidavit of defence, or pleads, without an inspection of the original, an order will be made by the court or a judge at chambers, for the production of the original at a convenient time and place to be designated in said order, and for an inspection thereof, which shall include the right to make copies, and that proceedings stay until the order be complied with. 23, 39.

500. Either party to an action (of ejectment, 17) may require in writing of the other party, an exhibition of all papers on which the action is founded, or which is relied upon as a defence (whether of record or not, 17) and to have copies thereof, if necessary, made at his own expense, within (10 days, 21, 29) (15 days, 8, 12, 17, 29, 51) (20 days, 20, 25, 26, 46, 49) (30 days, 48) after such requisition; and upon the refusal of either party to make such exhibition, or permit such copies to be made, the same shall not be given in evidence on the trial, 8, 12, 17, 20, 25, 26, 29, 46, 49, 51 (but actions involving title to land shall be so far relieved from the operations of this rule, that in all such actions an exhibition of a brief of the title papers by either party shall be considered a full compliance therewith, 48) but this shall not extend to papers and documents of which certified copies may be obtained from public officers, unless upon sufficient cause, shown by affidavit, and the allocatur of a judge of the court. 21.

501. If either party request the other in writing to permit the inspection of any specified book or paper relating to the cause, in his possession or power, and an inspection be refused or the request be disregarded, the court or a judge at chambers, for good reasons shown by affidavit, describing the book or paper with reasonable certainty, will grant a rule to show cause, at a time specified, why such book or paper should not be produced, to be served 14 days before the day fixed for hearing. And if at the day assigned no cause is shown, or the parties' affidavit of documents is insufficient, the rule will be made absolute, and an order entered for the production and inspection, which shall include the right to take copies of the book or docu-

ment described, at a convenient time and place to be designated. And if such book or document be not then produced for inspection it shall not be given in evidence on the trial. 23, 39.

502. If either party requests the other to permit the inspection of any book or paper relating to the cause, and an inspection be refused (the contents thereof may be proved by secondary evidence, which cannot be contradicted by parol, 16) such book or paper shall not be given in evidence on the trial. 42.

503. No application shall be made for the inspection of any book or paper within 15 days of the first day of the week in which the cause is set down for trial. 23.

504. Whenever the plaintiff or defendant shall make affidavit that he has reason to believe that any bond, note or other instrument of writing, the basis of any action or defence, is forged or was fraudulently obtained, the court shall order the same into the custody of the prothonotary for thirty days for examination by all parties interested. 2.

#### CERTIORARI

505. The party or parties suing out a writ of certiorari shall be entitled the plaintiff or plaintiffs in error. 45.

506. The prothonotary shall endorse on each writ of certiorari hereafter issued, a rule to appear and plead at the return day of the writ. 2.

507. Writs of certiorari shall be returnable to the next term, 1, 2, 4, 10, 11, 13, 15, 19, 20, 22, 23, 24, 25, 26, 34, 37, 44, 45, 46, 48, 49, and shall be served on the magistrate at least five days, 16, 17, 28, 35, 39, 43 (ten days, 6, 37, 48) before the return day.

508. The writ of certiorari shall be returnable (twenty days from the issuing thereof, 33, 50), fifteen days, 3) (twenty days, 14, 18, 27, 40) (thirty days, 5) after service, and the plaintiff in error shall see that service is made (within five days after the writ is issued, 3, 50) (five days, 14, 18, 27, 33, 40) (twenty days, 5) before the return day.

509 It shall be the duty of the party suing out a writ of certiorari to cause the record to be returned (two days, 1, 8, before the next argument day, 32) (on or before the first (fourth,

34, 36) day of the term, 2, 19, 24, 43) (within ten days (five days, 14) after the return day, 5, 11, 17, 37, 45, 50) (within twenty days (fifteen days, 15) after the writ issues, 28, 40) in default of which the certiorari will be dismissed, 1, 2, 8, 14, 15, 17, 19, 24, 28, 30, 22, 34, 36, 37, 43, 50 (as of course by the prothonotary, 5, 11, 13, 26, 40, 45, 46) unless the court is satisfied that the party has used due diligence to procure the return. 13, 20, 23, 26, 43, 44, 46, 49.

510. If the plaintiff in error shall not procure the proceedings to be returned by the next succeeding term after the certiorari issues, the court may enter a rule upon him to have the same returned, 29 (in ten days, 21) or non-pros, and for non-compliance shall enter a non-pros. 7, 12, 21, 38, 51.

511. The return of service of every writ of certiorari shall be made on or before the return day of the writ by the officer or person serving the same, in the mode in which return to other process is made. 47.

512. If the writ is not returned within the time limited for that purpose, the plaintiff in error shall, within five days after the return day, cause an affidavit of service of the writ to be filed in the cause, whereupon the prothonotary shall enter a rule on the justice or alderman to make his return within five days after service of the rule, which rule the plaintiff in error shall cause to be served within five days after it is entered. 3.

513. Rules on magistrates to return writs of certiorari, directed to them in due season (within five days (ten days, 10) after notice, 17, 28, 33, 35, 39), will be granted if the record is not duly returned, 1, 15, 32, and if it be not complied with an attachment will issue, 2, 4, 5, 7, 8, 10, 11, 12, 14, 17, 18, 19, 25, 27, 28, 29, 33, 35, 36, 38, 40, 44, 47, 50, 51 (upon proof of service of a copy of such rule, 13, 20, 23, 26, 39, 45, 46, 49), but the court will non-pros the certiorari for want of such return, unless satisfied that the party has used due diligence to obtain it. 4, 22, 24, 25, 34, 47.

514. If the court shall be satisfied that the failure to have the record returned is the fault of the magistrate, or that the record returned is imperfect or false, such order for a more perfect return, or for the production of the original record, may be made as may be thought proper, and enforced by attachment. 37.

515. If the plaintiff in error shall fail to comply with any of the above requirements on his part, in reference to the service of the writ and the return thereof, the writ shall be dismissed unless cause be shown to the contrary; if the justice or alderman does not return the writ, or make a more perfect return in obedience to rules for that purpose, the rules may be enforced by attachment. 3.

516. In case of death, resignation or removal of the magistrate (before whom the proceedings to be reviewed were held, 9), the writs, rules and attachments may be served upon the person in possession of his docket and official papers, 9, 17, 18, 27, 28, 29, 33, 35, 36, 41, 50, who shall return the cause of action, together with all his proceedings, in order that the court may judge of his jurisdiction as well as the legality and regularity of his proceedings and decision. 16, 42.

517. The justice or his successor in office shall return a full and true copy of his docket entries and proceedings in the case, together with a brief statement of the cause of action (and the original summons with the return thereon, and the execution or executions and the returns thereon, if any have been issued, 19), in order that the court may judge of his jurisdiction, as well as of the legality and regularity of his proceedings and decision. 19, 36.

518. When the proceedings are returned upon certiorari, exceptions must be filed (on or before the first day of the next term, 2, 7, 24) within three days, 4, 6, 23, 25, 36, 44 (four days, 12, 51) (ten days, 5, 17, 19, 29, 38, 46, 49) (fourteen days, 39) (fifteen days, 10, 40, 43) (twenty days, 20) after the return day) (within four days after the return of the record, 22, 26, 30, 48) (within three days after notice from the prothonotary of the filing, 13) (two days, 1, 8 (five days, 15, 32) ten days, 11, 45) (fifteen days, 47) before the first argument day) and in default thereof the (certiorari shall be non-prossed, 12) judgment below shall be affirmed, as of course, 1, 2, 4, 6, 7, 8, 10, 11, 13, 15, 22, 23, 24, 25, 26, 30, 32, 36, 38, 40, 43, 44, 45, 46, 47, 48 49 (by the prothonotary, 5, 17, 19, 20, 39) unless the plaintiff in error satisfies the court that there is a diminution of the record, and moves to have the<sup>same</sup> perfected, or lays other legal ground for postponement. 12, 29, 51.

519. On the return of a writ of certiorari to a justice of

the peace, the prothonotary shall endorse on the writ the day of its return, and give immediate notice thereof to the attorney of the plaintiff in error, who shall file his exceptions within five days thereafter, or judgment of non-suit may be entered of course, 27, 41, by the prothonotary. 14.

520. When the plaintiff has filed exceptions he may have a rule on the defendant in error to show cause at the next term why the judgment should not be reversed, or proceedings set aside; which rule, being served, may be made absolute at the next court, if sufficient reasons appear. 14. Service shall be made personally if the party lives in the county, but if not by posting in the prothonotary's office one month before the next term. 16, 42.

521. Upon the return of a writ of certiorari to a justice of the peace, the defendant in error may enter rule of course, upon the plaintiff in error to file his exceptions within five days (two days, 24), (fifteen days, 3) from the service of the rule upon him or his attorney, and if this rule be not complied with (the judgment below shall be affirmed of course, 3) judgment of non-pros shall be entered. 9, 18, 21, 24, 28, 33, 35.

522. The plaintiff in error shall not be entitled to a rule on the defendant in error to appear until he shall have filed his exceptions; nor then unless the errors assigned appear to be well founded, and the nature of the case to require that the defendant in error should be heard. 16, 42.

523. If at the time the plaintiff in error files his exceptions, the defendant in error has not appeared, the plaintiff in error shall at once enter a rule upon him to appear and show cause why the judgment should not be reversed; to be served promptly and proof of service to be filed in the office. If the defendant in error does not reside in the county, and has no attorney or known agent in the county, the rule may be served by leaving a copy thereof with the justice in the certiorari. 39.

524. When the plaintiff shall have filed exceptions or assigned errors, he may as of course enter a rule upon the defendant in error to show cause why the judgment should not be reversed or proceedings set aside, and place the cause upon the argument list. This rule shall go upon the rule book, and the attorney of the defendant shall take notice thereof. If there

be no attorney of the defendant of record, ten days notice of the same shall be given to the defendant, if resident in the county; and, if not resident, a copy thereof put up in the prothonotary's office for fifteen days shall be deemed a service. On the hearing of the rule, compliance herewith being shown, the same may be made absolute, if sufficient reasons appear. 36.

525. When a certiorari is reached on the argument list, judgment of non pros will be entered as a matter of course, if the plaintiff in error shall not previously have filed his exceptions. 16, 42.

526. If the justice's record has been returned, or been in the power of plaintiff in error a less time than twenty-four hours, such further time as the court may see proper to give will be allowed for filing exceptions. 16, 42.

527. Exceptions relating to matters of fact dehors the record must be supported (by testimony in open court, 15) by depositions, 32 (or documentary evidence, 6, 30, 48), where the matters of fact are such as, if true, ought to reverse the proceedings. 7, 38. Unless so sustained, or verified by agreement of counsel filed in the cause, such exceptions will be disregarded. 23.

528. Exceptions alleging want of jurisdiction in the justice or of notice to the party, shall be accompanied by an affidavit of the party, his agent or attorney, that in fact the justice had not jurisdiction, or that the party had not legal notice. 15, 32.

529. The exceptions must be specific, 5, 10; the assignment of general errors will not be regarded. 1, 2, 3, 8, 13, 15, 19, 23, 30, 32, 39, 48.

530. In case diminution of record is suggested, exceptions to the amended return of the justice or alderman may be filed at least ten days prior to the first day of the next succeeding argument court, or in default of exceptions being filed as aforesaid, the proceedings shall be affirmed, as of course. 11.

531. Either party may suggest diminution of record, founded upon affidavit specifying the matters omitted, or defective, within fifteen days after the return, and apply for a rule on the magistrate to perfect the return. 10.

532. Diminution of record must be suggested before the case is moved for argument, 2, 4, 13, 23, 24, 26, 28, 30, 34, 35, 39, 44, 45, 46, 47, 48, 49 (during the first week of the term at



which the proceedings were returned, 36), and it shall be the duty of the party alleging the same to suggest in writing, to be filed, in what the record is deficient, whereupon the court, if there has been no unnecessary delay, and it is deemed necessary, will grant a rule on the justice to make a more perfect return, and will enforce the same by attachment. 9, 14, 16, 18, 27, 29, 33, 40, 41.

533. Diminution of record must be alleged within (five days, 3, 5) (ten days, 17, 50) after the return day, supported by affidavit specifying the matter omitted or withheld, and application made for a rule on the magistrate to make a fuller return, 5 (otherwise the return will be taken as true, 17, 50), whereupon if the defect is material the court will grant a rule on the justice or alderman to make a more perfect return within five days after service of the rule. 3.

534. If the plaintiff in the certiorari suggests diminution of record, he must do so during the term to which the writ is returnable, and if the defendant therein, in the term previous to the expiration of the time for filing exceptions under the rules of court. 19.

535. Any party suggesting diminution of record shall specify in the rule for a more perfect return in what respects the record is deficient, showing to the satisfaction of the court, the propriety of granting such a rule, 21 (which rule he must serve upon the justice or his representative, 8, 12, 51), and if through the negligence of the party applying, a more perfect return be not obtained before the case is moved for argument, the record as returned shall be acted upon, 2, 6, 13, 20, 22, 23, 26, 34, 36, 43, 44, 45, 46, 47, 49, unless the party make it appear that he has done everything in his power to obtain a more perfect return. 8, 12, 25, 51.

536. Upon grounds being laid by affidavit, or otherwise, to the satisfaction of the court (within five days from the return day of the writ, 43) a rule may be had upon the justice to bring his docket, containing the original entry of the suit into court for inspection. 4, 7, 9, 11, 13, 14, 16, 18, 22, 23, 27, 28, 33, 34, 35, 38, 39, 41, 45, and also, if necessary, the original papers in his possession connected with the case. 3, 8, 12, 20, 21, 25, 26, 29, 43, 46, 49, 51.

537. When the defendant in error does not reside within

the county, and has no known agent or attorney, rules and notices may be served on the justice of the peace ; which service, when not less than one day for every ten miles between the county seat and the residence of the defendant in error, shall have the same effect as a service on the defendant himself. 14, 27.

538. In default of appearance when the cause is called for argument, and on proof of ten days service on the defendant in error (of a copy of the writ of certiorari, 11, 45,) (the court will proceed ex parte, 2, 45.) Judgment will be entered against the defendant in error for want of an appearance. 11.

539. The prothonotary shall put the case on the argument list succeeding the return day in all cases, 15, 16, where the record has been returned, and exceptions duly filed, 39, 40, 47, ten days before the day fixed for argument. 11, 15, 37, 45.

540. No certiorari will be taken up and decided by the court, until the exceptions of the plaintiff are filed in writing. 25.

541. The judgment of a justice of the peace will not be reversed on certiorari for any overcharge of costs or fees, unless it shall be made to appear to the court, that such overcharged costs or fees were objected to by the party, his agent or attorney, to the justice, previous to suing out the certiorari, and that the justice refused to retrench or correct the same. 19.

542. Where the judgment entered by the justice is reversed, the court will enter judgment for the costs which have accrued on the writ of certiorari. 14, 18, 21, 27, 28, 29, 33, 35, 41.

543. No certiorari shall be a supersedeas unless the party who obtains it gives good and sufficient bail to the amount of the demand and costs adjudged by the justice, 10, (double the amount, 3, 18, 21, 37) to the use of the opposite party (conditioned that the certiorari will be prosecuted with effect, 3, 6, 7, 8, 9, 11, 12, 13, 16, 18, 21, 25, 32, 37, 38, 40, 41, 43, 44, 46, 51) (nor even then when execution has been fully executed, 7, 8, 11, 13, 15, 19, 23, 25, 32, 34, 36, 43, 44, 45, 46, 49, 51, or goods and chattels levied on, 42, except to stay the money in the hands of the officer upon notice given to him, until the determination of the certiorari, 36) and when bail is so given the prothonotary shall endorse the fact on the writ. 3, 4, 6, 8, 11, 12, 13, 14, 17, 18, 20, 21, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 36, 37, 43, 44, 45, 46, 47, 48, 49, 50, 51.

544. Exceptions may be made at any time to the sufficiency

of the bail, and notice thereof given, and on failure to justify, add, or substitute sufficient bail in one day after notice, the execution may proceed, or money made be paid over. 10, 36.

545. These rules shall apply with like force and effect to the city recorder as to justices of the peace. 29.

### CHARTERS OF INCORPORATION

546. All petitions for charters of incorporation and for amendments to such (and for the consolidation of corporations, 39) shall be filed in the prothonotary's office, 1, 36, 39, and there remain (during the entire period for which publication of notice of the intended application is required by law, 5, 11, 13, 14, 15, 23, 45) for five days (ten days, 10, 18) immediately preceding the presentation of the application to the court. 3, 10, 18.

547. Before publishing the notice of an intention to apply to the court or either of the judges for the charter of a corporation, such charter shall be duly engrossed, executed and acknowledged by the subscribers thereto, and filed in the prothonotary's office. 45.

548. Notice of intention to apply for a charter or amendment to a charter of the first class shall be inserted once a week for three weeks in the legal newspaper; and in two newspapers of general circulation in this county. 2.

549. The published notice shall set forth the court, term and number of the proceedings, 14, 45 (the fact that it is on file, 39), (the character and object of the corporation, 2, and the names of the five subscribers, 13), and the time and place it is to be heard, 1, 2, 11, 18, 23, 36, 39 (and no application will be heard at any other time unless by special permission of the court, 10), and that time must be at least twenty-one days after the date of the first publication. 13.

550. No objection or exception to a charter will be considered unless reduced to writing and filed before the time fixed in the notice published. 10, 18.

551. When the proposed charter has been filed, the prothonotary shall give it a term number, and enter in the appearance docket the name, object and place of business of the proposed corporation, and subsequently memorandum of the action of the court taken thereon. 13.

552. All applications for charters shall be presented to the court when in session, or to the president judge in vacation, at his chambers in the court house. 13.

553. In all cases in which application shall be made for a charter, excepting when otherwise ordered by the court, the said application shall be referred to a master, who shall carefully inquire and report to the court concerning the lawfulness of the intended corporation, and its being or not being injurious to the community. It is further ordered that the sum of fifty dollars shall be deposited with the prothonotary upon the filing of each application to cover the expense of such inquiry and report. .1.

554. No application to change the name, style and title, or to alter or annul the charter of any corporation, will be entertained, unless it be accompanied by evidence that the proposed change has been agreed to by a majority of the members at a meeting called for that purpose. 27.

#### COMMISSIONS

[See Depositions.]

#### CONDEMNATION PROCEEDINGS

555. When the party claiming damages does not accept the bond as tendered, the company shall give said party five days notice in writing of the time when said bond will be presented for filing in court. 14.

556. Whenever any application shall be presented to the court for the appointment of viewers to estimate and determine the damages occasioned by the location and construction of the lines or works of any corporation invested with the power of eminent domain, and in lateral railroad proceedings, such application shall be marked filed, and the court shall thereupon fix a time, not less than fifteen days thereafter, for the making of the appointment prayed for, of which time fifteen days notice shall be given by the party presenting such application to the opposite party. Within three days after such filing the court shall place on file a list containing the names of three times as many persons as the viewers to be appointed. If no exceptions shall have been filed to the sufficiency of the application, it shall be the

duty of the parties to meet in person, or by their agents or counsel, on or before the time so as aforesaid fixed by the court, and to each strike off from said list one-third of the names thereon, the names to be stricken off, one at a time, by the parties alternately, the petitioner commencing; and the persons whose names are then left upon the list shall be the viewers whom the court shall appoint. In case of the neglect or failure of either party so to strike off, the court will strike off the proper number of names for such party. No objection to any of the persons named in said list shall be made in any other way than by striking off, except on the ground of ineligibility under the Act of Assembly regulating the proceeding, or for such reasons as would be a good cause of challenge in the empanelling of a jury in a civil action. 27.

557. Ten days (five days, 9, 28, 35, 41) notice of an intended application, by petition, for the appointment of viewers to estimate damages, pursuant to Section 11, Act 19th February, 1849, shall be given by the applicant to the adverse party. 9, 11, 13, 14, 23, 26, 28, 35, 41, 44, 45.

558. Unless otherwise ordered by the court, or the judge in vacation, at least five days notice shall be given of every intended application for the appointment of viewers to assess damages for the taking, injuring or destroying of private property for public use, by municipal or other corporations, or individuals. 3, 18, 36.

559. In all cases where private property has been taken, injured, or destroyed, by municipal or other corporations, invested with the power of eminent domain, applications for the approval of a bond, or for the appointment of viewers, shall be by petition, which shall set forth the property taken or affected, with a map or plot of the same, the names of the owner or owners thereof, and such other facts as are necessary to give jurisdiction. There shall be a separate petition for each property. 13, 45.

560. Where viewers are appointed, notice in writing of the time and place of holding the view shall be given by the party obtaining their appointment to the opposite party, which notice shall be served in the manner provided for service of a summons, and due proof of such service shall be made and returned with the report of the viewers. 45.

561. In proceedings to assess damages for land taken to straighten, widen or improve the line of any railroad or any other company, where the company proposes to abandon the whole or part of their original line on the completion of the improved line, that fact and a description of the part intended to be abandoned must be stated in writing and filed of record before the viewers meet; otherwise the company will be taken to have elected to retain the possession and use of the original line, and its abandonment shall not be allowed for by the viewers or on the trial. 17, 50.

562. In all cases where, pursuant to law, proceedings have been had in the court of quarter sessions for the assessment of damages against any municipal or other corporation, or individual or individuals invested with the privilege of taking private property for public use, for property taken, injured or destroyed by the construction or enlargement of their works, highways or improvements, and where the parties to such proceedings are, by law, entitled to an appeal to and a trial by jury in the court of common pleas, the party or parties appealing (unless otherwise prescribed by general or special Act of Assembly), shall within the time prescribed by law for taking such appeal, file in the court of quarter sessions, to the number and term to which the proceedings for assessment of damages were instituted, a paper containing the title of the case as thus instituted, stating therein the fact that the party or parties filing the same appeal from the report or decree, as the case may be, of the tribunal rendering such report or decree to the court of common pleas of this county, which said paper shall be signed by the party or parties appealing or their attorney. 11.

563. Petitions for the appointment of viewers to assess the damages occasioned by the exercise of the right of eminent domain shall be presented on the first Monday of the month, and the viewers shall make their report to the second Monday of the month following next after their appointment, unless it is otherwise directed by Act of Assembly. 3.

564. All reports of viewers appointed to assess damages for injuries done by corporations, in taking property for corporate purposes, under any Act of Assembly, shall be filed in open court, after five days notice has been given of the time of filing the same. 15.

565. Upon presentation of the report of viewers in the prothonotary's office, or in open court, the same shall be by him marked "filed and confirmed nisi," 36 (with the date of filing, and notice in writing of such filing and confirmation shall be given to the adverse party, or his counsel, within ten days thereafter, 26) which confirmation shall become absolute, unless exceptions or an appeal, or both, be filed within (the time prescribed by law, 14) 30 days from the filing of the report, 15, 23; and the prothonotary shall, without further order, enter judgment thereon. 18, 36

566. If exceptions only be filed, they shall be proceeded in as in the case of exceptions in other matters, and the report confirmed or set aside, or referred back as the case may be. 23.

567. If an appeal or appeals only be filed, it or they shall without special order or direction, be put at issue under the form of an action of assumpsit, without pleadings, the railroad company being the defendant. 23.

568. If both exceptions and appeal or appeals be filed, the exceptions shall be first disposed of. If they are dismissed, the appeal or appeals shall then go on. If they are sustained and the report set aside, the appeals shall be stricken off without prejudice. 23.

569. Exceptions to reports assessing damages, except those under Act of May 24, 1878, P. L. 129, shall be filed with an affidavit of the truth of facts not appearing on the face of the record, within thirty days from the filing of the report. 38.

570. In all cases of reports of juries assessing damages for the taking of property under the right of eminent domain, any one interested may enter an appeal from such assessment within thirty days from the filing of the report, and where such appeal is entered all exceptions shall be dismissed of course. Such appeal shall be signed by the party appellant, his agent or attorney, and must be accompanied by an affidavit, by the party appellant, his agent or attorney, that the same is not taken for the purpose of delay, but because the affiant firmly believes injustice has been done. When taken in the Quarter Sessions the appeal shall be filed in the office of the clerk thereof, and the party appealing shall, within five days thereafter, file a certificate of his appeal, certified by the said clerk, in the office of the prothonotary, whereupon the pro-

thonotary shall enter said appeal upon the Continuance Docket, in which the owner, occupier, or other person entitled to damages shall be plaintiff, and the county defendant, and immediately upon such entry the case shall be considered at issue as upon a declaration for money had and received, and a plea of non assumpsit. And like issues shall be framed in cases of appeals from the assessment of damages in the common pleas. 38

571. On appeals from the reports of viewers, the issue shall be formed as follows, viz.: The party claiming damages shall be made plaintiff, and the corporation or individual taking the land the defendant. The plaintiff shall (within 30 days after appeal or notice thereof, 11) file a statement or declaration describing the land or materials, etc., and the value thereof, and averring his estate therein and his damages, and any other matter specially directed by the court to be tried. The defendant thereupon shall (within 15 days after notice in writing of the filing of the statement, 11) file his plea traversing such material allegations in the statement or declaration as he intends to deny, and such as are not traversed shall be taken, at the trial, as admitted. 5, 18, 26, 27, 28, 33, 35, 36, 41. The cause shall then be considered at issue. 4, 10, 11, 14, 16, 17, 50.

572. In proceedings against corporations to recover damages for lands, or materials taken, when an appeal shall be filed from the award of viewers appointed by the court, the claimant's petition shall be treated as a narr or statement, and the plea of the defendant shall be "not guilty," and entered of course by the prothonotary. 19, 37.

573. If the plea filed be accompanied with an offer to confess judgment for a sum named (or such offer be afterwards made, 18) and the plaintiff declines to accept such judgment, he shall be chargeable with all costs accruing after such plea, unless he shall recover a greater sum than the amount so offered, with interest to the time of trial. Failure to accept such offer in writing (within thirty days after notice, 16) shall be deemed an election to proceed to trial. 4, 16. Upon the tender of judgment, and acceptance thereof, the prothonotary shall enter judgment accordingly. 10, 18.



### CONFIRMATION

[See also §§ 222, 227, 229, 231, 236, 565, 806, 807, 821, 826-828, 831, 1632-1637, 1641, 1699, 1701 and 1703.]

574. All accounts, reports, and the like, requiring confirmation by the court shall on presentation be confirmed nisi, which confirmation shall become absolute without further order unless exceptions are filed within fifteen days thereafter; but the confirmation may be made absolute in the first instance in a proper case. 3.

### CONTINUANCES

[See Arguments and Trials.]

### CORPORATIONS

[See Charters of Incorporation and Condemnation Proceedings.]

### COSTS

[See also §§ 15, 104, 107, 144, 310, 390, 391, 452, 573, 796, 843, 844, 923, 945, 949-952, 979, 1006-1009, 1076, 1116, 1163, 1176, 1200, 1201, 1255, 1309, 1363, 1384, 1579, 1685, 1721, 1727, 1728, 1779, 1798, 1838, and 1843-45.]

575. In cases where the plaintiff resides out of the State at the time of suit brought, or subsequently removes therefrom, (in qui tam actions, 16, 32, or where the plaintiff after suit brought has taken the benefit of the insolvent or bankrupt laws, 1, 2, 4, 7, 8, 10, 12, 13, 14, 15, 18, 20, 22, 23, 24, 25, 26, 33, 34, 36, 37, 38, 40, 42, 43, 44, 46, 47, 49, 50, 51, within five years prior to suit brought, 11, 45), (in actions on administration and office bonds, 1, 8, 9, 12, 14, 15, 18, 20, 23, 25, 32, 36, 42, 46, 49, 51), (at any time before plea filed, 29), the defendant on motion and affidavit of the facts, and of a just defence against the whole demand, shall have a rule that plaintiff give security for costs (at or before some period to be named in the rule, 4, 11, 13, 20, 22, 23, 25, 26, 40, 42, 44, 45, 46, 47, 49), on or before the first day of the next term which is at least thirty days distant, 2, 7, 12, 19, 27, 36, 41, 51) (within thirty days after notice, proceedings to stay meanwhile, 3, 5, 17, 28, 29, 30, 35, 37, 48, 50) (within twenty days after service of the rule, 14),

and in default of security being entered at the time fixed judgment of non-suit may be entered on motion, 1, 2, 3, 4, 7, 8, 9, 11, 12, 13, 15, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 51 (by the prothonotary, 5, 14), (as follows :

“ (Style of Suit)

C. D., the above-named defendant, and E. F., his attorney, severally make oath and say : And first C. D. for himself saith, that the place of residence of the above-named plaintiff is ; that he has not lands or goods in the county, subject to sale upon execution sufficient to answer the defendant his costs in this action; and that the affiant was served with a summons in this action on last past, and that he has a just defence to the whole of the plaintiff's claim. And the said E. F. for himself saith, that a declaration in this case has been duly filed, but that the defendant has not yet pleaded thereto, and that he did on demand of G. H., the plaintiff's attorney, security for costs in the sum of \$ which has not been given,” 16, 39) (Provided ten days notice of the rule before the time for entry of security shall have been given to a party having no attorney of record. 36). The defendant in a Sheriff's Interpleader shall be considered to be a plaintiff within the meaning of this rule. 9.

576. If the security given becomes insolvent or insufficient before the determination of the cause, the defendant may compel the plaintiff in the same manner to give other or additional security. 11, 13, 20, 23, 24, 25, 26, 34, 43, 44, 45, 46, 47, 49.

577. In feigned issues, if the defendant resides out of the State, upon affidavit that the property in dispute belongs to the plaintiff, the defendant shall be required to give like security, and on failure thereof judgment may be entered against him on motion in open court. 18.

578. In cases where the plaintiff resides out of the State, or it is shown to the satisfaction of the court that he is insolvent, the defendant, upon filing a sufficient affidavit of defense, may have a rule upon him to enter security for costs within such time as the court may direct, with such personal notice to plaintiff or his counsel as the court may order, if either reside in the county, or if not, on notice to either by letter properly advertised. 6.

579. In all other cases the defendant after filing an affidavit of defense, may on motion, for special reasons assigned, supported by affidavit, obtain a rule on the plaintiff to show cause why he should not give security for costs, and upon the hearing of the rule, the court will make such order as the special circumstances may seem to require. 3, 5, 6, 9, 10, 11, 14, 21, 27, 28, 29, 35, 37, 40, 41, 43, 45, 48.

580. If application be made after plea pleaded (except in cases where the plaintiff after suit brought removes from the State, or takes the benefit of the insolvent laws, or the security given becomes insolvent or insufficient, 23) the defendant must support his application with an affidavit that he was not apprised of the fact of the plaintiff's residence out of the State until after he had taken the last previous step in the action. 23, 39.

581. The order upon a rule for security for costs shall be that the plaintiff (within a specified time, 23) (within 30 days after notice of the rule, 39), give security in a sum to be fixed by the court, or deposit that sum with the prothonotary to answer the defendant his costs in the event that the plaintiff be non-suit, or a verdict be given for the defendant, and that, in the meantime, all further proceedings be stayed. 23, 39.

582. The rule will be discharged if the plaintiff satisfactorily shows, by affidavit, a good cause of action, stating the grounds and particulars of his claim, or that he has not the means to comply with the order if made, and that the same would be equivalent to a denial of justice. 23, 39.

583. Bills of costs for attendance of witnesses at terms when a cause is continued or tried, must be filed (and a copy thereof served on the other party, 1, 23) within (four days (ten days, 17) after the expiration of the term, 14) after the continuance or trial (or they will not be allowed unless upon cause shown to the court, 17); and the other party may, within four days after the service of the bill, require the party who files it to tax the same before the prothonotary on forty eight hours notice. No bill of costs shall be allowed unless it has been filed and a copy thereof served within the time fixed by this section; nor shall any objection to any bill of costs be heard, unless the party who filed it shall have been required to tax it under this section. 1, 23.

584. Bills of costs shall contain the names of the witnesses, the dates of their attendance, the places from which mileage is claimed, 1, 23, (and the names of witnesses served with subpoenas, and circular mileage in serving the same, 17, 50) and every other item, charged in such detail as to enable the opposite party to judge of its correctness, and the officer to tax it properly; and any insufficiency in these respects shall be a good ground of objection to the particular charge. 36.

585. They shall be verified by the affidavit of the party filing them, or his agent or attorney, that the witnesses were actually present in court on the days stated, and that in his opinion they were material witnesses, 1, 6, 17, 28, 35, 37, 48, 50 (and that their attendance was necessary during that time, and they were entitled to witness fees, 23,) and of such other facts as entitle him to make a charge of it. Bills so verified shall be prima facie evidence of the truth and accuracy of the bill and of the facts contained in it, 2, 7, 10, 15, 19, 32, 36, 38, 39, and will be held conclusive, unless specially contradicted under oath, 16, 18, 40, (and charges not so sustained shall not be allowed. Separate bills and affidavits of witnesses shall not be received, except to sustain the bill and affidavit of the party when impugned. 36). On filing the bill, the officer shall endorse thereon, "Taxed and allowed as filed," and at the same time tax the docket costs. 39.

586. All bills of costs shall be accompanied by an affidavit of their correctness, that the witnesses were actually present in court when required, of the necessity of the number of witnesses in attendance, and their materiality, and shall be filed in the prothonotary's office, and notice of such filing shall immediately be given the opposite party, or his attorney of record. Unless exceptions to said costs, stating in detail the grounds of such exceptions, supported by affidavit, be filed within ten days after said notice, the prothonotary shall tax the bill so filed. If such exceptions be filed, the prothonotary shall forthwith designate a time, not more than ten days distant, for a hearing, and give written notice thereof to both parties or their attorneys. On said hearing such testimony shall be taken as the parties or either of them shall produce, and thereupon the prothonotary shall determine the facts and tax the bill in accordance there-

with, subject to an appeal to the court in three days, in cases where the amount of the bill as taxed exceeds twenty dollars. 14.

587. Notwithstanding the foregoing, the prevailing party may have a bill of costs taxed on twenty-four hours notice to the adverse party or his attorney, and the latter may, in any case, have a rule requiring notice of the time and place of taxation, or taxation nisi, to be given him, so that he may be present, and enter forthwith his rule for final taxation. 18.

588. The party filing a bill may amend it under oath, or substitute another, before an appeal is taken, in which case the amended bill or substitute shall be retaxed, and be subject to appeal. After amendment, or substitution and retaxation, further amendment or substitution shall not be allowed except upon special leave of the court. 36.

589. The party entitled to costs may file his bill, verified by his oath, or that of his agent or attorney, that it is correct of his own knowledge, or as he is informed and truly believes, and that the witnesses were material and necessary as he believes, or as he was advised or informed, and truly believed at the time of service and trial. 18, 33. If either party object to a bill of costs, he shall file his exceptions, in writing, with the prothonotary, who shall hear and determine the same, and if either party be dissatisfied, then, and not until then, shall the matter be heard by the court. 9, 41.

590. If either party objects to a bill of costs he must file his objection in writing, and when the bill exceeds twenty dollars, exclusive of sheriff's or clerk's fees, must serve notice on the opposite party or his attorney of the time when the same will be taxed, 9; and the prothonotary will hear and determine the said objections. 12, 51.

591. Exceptions to a bill of costs shall particularize the items objected to in detail, and not merely in gross, unless the exceptions be to the whole bill for any general reason. Such exceptions must be accompanied by a positive affidavit of the truth of the facts alleged, or an affidavit of their truth from information, and that the party believes he will be able to establish the truth of the same on a retaxation. When the affidavit is positive, the party filing the bill must be prepared to prove the same before the prothonotary, by the examination of himself, or such other testimony as he may believe material; the exceptor

to be at liberty to bring evidence to disprove the bill. When the exceptor's affidavit is founded on information and belief, the bill of costs on the hearing before the prothonotary will still be considered *prima facie* sufficient, if the person attesting to the same attend and be ready for cross-examination by the exceptor, who may thus or by other testimony, support his exceptions. The party desiring to sustain the bill may do so by his own re-examination in detail, and by other testimony. If the exceptions set forth an assertion of new facts in avoidance of the bill, or any portion of it, the exceptor must establish the same upon a hearing by competent testimony; or the bill will stand as filed. 45. Notice to retax must be served on the opposite party, if he is resident within the county; if not so resident, service may be made upon his agent or attorney. 11, 22.

592. When a bill of costs is excepted to, the exceptor shall serve notice on the opposite party, or his attorney, and state a time when the bill will be taxed, not more than ten days, nor less than five days, after such exceptions, and in case the exceptor fails to sustain his exceptions within such period, the same shall be dismissed by the prothonotary and the costs paid as per bill filed. 21.

593. The prothonotary, when desired, shall hear proofs in support of the exceptions, and counter proofs, if any; taking note thereof, and shall pass upon the same allowing or moderating the bill as filed; and when an appeal is taken shall report the notation of proofs taken, 18, together with his conclusions, and when necessary to their understanding, a succinct statement of the reasons therefor. 16.

594. All bills of costs shall be taxed in the first instance by the prothonotary, 3, (if taxation be required) (subject to a retaxation by the same officer, 16, 39, 50), and subject to an appeal to the court, 1, 7, 8, 16, 21, 32, 33, 38, 50, at any time before the money is made and paid over. 5, 6, 27. (The prothonotary shall state upon the bill the changes or alterations he makes therein, and the final sum at which it is taxed, 36), but execution may issue for the part not excepted to. 27.

595. Bills of costs, accompanied by an affidavit of their correctness, and the necessity for the number of witnesses in attendance, shall be taxed by the prothonotary, 4, 24, 47, unless

manifest error in law or fact appear in them. 11, 13, 20, 22, 23, 25, 26, 29, 30, 34, 43, 44, 45, 46, 49.

596. Whenever, after an appeal by the defendant, the amount recovered by the plaintiff below is reduced, either by arbitration or a trial by jury, no writ of execution shall issue (unless by agreement of parties) until the costs are taxed by the prothonotary, who shall tax the same on application of either party, after reasonable notice to the other side, subject to an appeal to the court, as in other cases. 1.

597. Any party intending to tax costs before the prothonotary shall give him and the opposite party (notice, 2, 17, 25, 33, 42) 24 hours notice of such intention, 1, 8, 15, 32, 40 (if the amount exceeds \$10, 36) (\$15, 2, 32) (\$25, 10) (\$20, exclusive of the sheriff's or prothonotary's fees, 16, 20, 25, 33, 42) (one hours notice if the bill, exclusive of sheriff's or clerk's fees exceeds thirty dollars, 46, 49, and without notice if it is less than that sum, 10, 16), if he live in the county or is attending court from a neighboring county. 42.

598. When a bill of costs exceeds the sum of (\$15, 6, 37) (\$20, 5, 41) before issuing execution for it, the prothonotary shall give the opposite party, or his attorney of record, if resident in the county, 24 hours notice of the time when he will examine and tax the same. 5, 6, 37, 41.

599. If either party is dissatisfied with the officer's taxation of the costs, he may have them retaxed at any time before the money is paid over to the party entitled to the costs, on filing a specification of the items to which he objects and the grounds of his objection, and on giving the taxing officer and the opposite party 24 hours notice of his intention to have the costs retaxed. The taxing officer will disallow the items objected to so far as erroneous, and allow the rest. 39.

600. Upon exceptions filed (accompanied by an affidavit of the truth of the facts set forth therein, 4, 11, 13, 20, 22, 23, 24, 25, 26, 29, 43, 45, 46, 47, 49), a rule for retaxation before the prothonotary, at his office, may be entered by either party, 10, 17, 19, giving at least five days (four days, 18,) (ten days, 7, 38,) notice to the opposite party, or his attorney, of the time of such retaxation, 4, 7, 11, 13, 20, 22, 23, 24, 25, 26, 29, 30, 38, 43, 44, 45, 46, 47, 48, 49, 50, and if the party excepting fails to fix the time for retaxation within sixty days after filed (five

days notice, 45,) and to give due notice of the same, the prothonotary may at any time, on application of the opposite party, dismiss the exceptions. 13, 34, 45.

601. If either party be dissatisfied with the taxation (or retaxation) he may appeal to the court therefrom, 11, 12, 13, 17, 20, 23, 25, 26, 29, 42, 43, 47, within (two days, 10, 33, 45) three days, 8, 15, 21) (four days, 16, 39) (five days, 2, 3, 15, 27, 38) (ten days, 23, 24, 32, 46, 49, 51), and shall within (one day, 18, 28, 35) (three days, 1, 19, 36, 38) (seven days, 2) file a specification of the items to which he objects, 5, 33, 40 (verified by affidavit, 2, 3) otherwise the appeal shall be dismissed, 3, 18, and the costs awarded according to the taxation of the prothonotary. 1, 7, 8, 10, 15, 16, 19, 21, 23, 27, 28, 32, 35, 36, 37, 38, 39.

602. If on filing the specification containing the grounds of appeal the prothonotary shall be of opinion he has erred in his taxation, he may on notice to both parties of the time, retax the bill, and if all the objections are thereby disposed of the appeal shall be dismissed, otherwise it shall stand only for those that remain. 36.

603. When the bill of costs does not exceed (five dollars, 17, 50), (ten dollars, 28, 35), (fifteen dollars, 18), exclusive of sheriff's and clerk's fees, the taxation thereof by the prothonotary shall be conclusive. 17, 18, 28, 35, 50.

604. If an appeal be taken the prothonotary shall make a statement of the facts in the case, and upon such statement the court will hear and decide the case, 4, 11, 13, 14, 20, 22, 23, 24, 25, 26, 29, 34, 43, 44, 45, 46, 47, 48, 49, and no question will be considered which was not distinctly raised before the prothonotary. 10.

605. The evidence on an appeal shall be in the form of affidavits unless depositions are ordered. 39.

606. No question will be entertained by the court on an appeal taken from taxation after notice which has not been distinctly raised before the prothonotary. 16, 18.

607. If the court be in session at the time of an appeal, the applicant shall file immediately a specification of the items to which he objects, with his reasons, so that the matter may be disposed of before the court rises. If not in session (the specification shall be filed, and 42) the appeal shall be brought up at



the first term after the taxation takes place, or it will be considered waived. 28, 35, 42.

608. Costs may be stopped in the hands of the sheriff or prothonotary, by notice not to pay them over until proceedings for taxation had and ended. 5, 39. In such case either party may have the costs taxed on (twenty-four hours, 1, 8, 32) (forty-eight hours, 23) (five days, 27) notice to the opposite party or his attorney of record. 1, 8, 23, 27, 32.

609. No exceptions or appeal from a taxation regularly made shall operate to stay execution, or prevent the collection of the debt or costs (not in controversy, 14) (without the special order of the court or a judge thereof, on cause shown, 10, 23, 37, 39), but when collected on execution or paid into court the costs excepted to will be retained until the question is decided. 2, 4, 6, 7, 10, 11, 13, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 28, 29, 34, 35, 37, 38, 39, 40, 43, 44, 45, 46, 47, 48, 49, 50.

610. In all cases (where judgment is obtained upon trial, or confession after issue joined, 36), a party who issues execution without having filed his bill of costs (and having the same taxed, 36) shall be taken to have waived the same. 17, 36, 50.

611. The prothonotary shall be governed by the following rules in taxing costs :

1st. A party shall not be allowed to tax fees for the attendance of a witness for a term at which the cause was wrongfully on the list.

2nd. Nor for a witness who is incompetent to testify, or whose testimony is immaterial and irrelevant.

3rd. Nor for witness fees and mileage for his own attendance.

4th. Nor shall a witness be allowed double pay or mileage if subpoenaed in more than one suit, but the witness may elect which party he proposes to look to for his fees, and file his bill accordingly.

5th. Witnesses subpoenaed in good faith (of which good faith, when controverted, the court must judge,) but not examined, and examined but not subpoenaed, are entitled to their per diem fees, and those who attend on request stand on the same footing.

6th. Mileage shall be calculated by the usually travelled route, whether by railroad or turnpike. The route actually

travelled in any particular case, if shorter than the railroad, will govern.

7th. A party or officer serving subpoenas is only to be allowed the actual mileage travelled. He shall not be allowed mileage to and from the court house unless the distance was actually travelled, and actually necessary for the purpose of serving subpoenas and for no other purpose.

8th. Constables shall not be allowed witness fees or mileage for the first day of the term, nor shall a juror draw pay as juror, witness and constable for the same day or time. 30.

612. No person attending in the discharge of a legal duty, as a justice, sheriff, constable, juror or other officer, or the agent of the party, or a party in another suit, shall be allowed his daily pay as a witness while so attending. 9, 10, 17, 28, 33, 35, 36, 41, 50.

613. Court officers in actual attendance upon court shall not be entitled to witness fees. 13, 45.

614. No costs shall be taxed for witnesses who are necessarily or officially in attendance upon court for other purposes, unless (subpoenaed and, 37), detained beyond their other engagements, and then without mileage. 6, 18, 37, 48.

615. A person called upon incidentally in or about the court house, with or without a subpoena, to give testimony, shall not be allowed his daily pay as a witness, unless it shall appear he was thereby prevented from attending to his own business, occupation or employment. 11, 13, 14, 22, 23, 26, 34, 43, 44.

616. When witnesses in any case absent themselves from the court house, and are not present when their presence is required, so that the business of the court is delayed by their absence, unless sufficient cause is shown, no pay for that day shall be allowed in the bill of costs for such absent witnesses, 11, 14, 16, and they may also be proceeded against for contempt. 13, 45.

617. Witnesses resident at the county seat shall only be allowed pay for the day when the case was actually tried, unless they file their individual affidavits of other attendance, 10, 16, 18, or that fact be made otherwise to appear. 40.

618. Whenever the parties to a suit on the trial list shall agree to take up the case on a particular day (other than the

first day of the term), the witnesses shall be allowed for the day preceding the one thus fixed, where they are in attendance on that day, if they reside five miles or upward from the county seat. 22.

619. When a witness is subpoenaed, or called, in more than one cause between the same parties at the same court, only one mileage, and one per diem compensation shall be allowed such witness. 6, 48. Both shall be taxed in the case first disposed of, after which the per diem attendance fee shall be taxed in the other cases, in the order in which they are disposed of. 18, 37.

620. Fees shall not be allowed witnesses attending upon a taxation of costs. 9, 17, 28, 33, 35, 36, 41, 50.

621. No witness shall be allowed more than one mileage, and daily pay for his attendance, leaving to him his right of election as to the party who shall pay the same. 9, 10, 17, 28, 33, 35, 36, 41, 50.

622. Mileage shall not be allowed beyond the line of the county unless by special order of the court. 17, 50.

623. Witnesses brought out of another State shall be allowed mileage from and to the boundary line of the State, 6, 8, 12, 24, 37, 48, 51 (in the ordinary route of travel to and from their residence to the place where the court is held, 18, 27, 28, 33, 35, 36), (but no fees shall be allowed for a subpoena or service thereof, 11, 13, 14, 16, 20, 22, 23, 25, 26, 34, 44, 45, 46, 47, 49) and no witness brought out of another State or county shall be allowed mileage beyond the line of the county, unless it appear satisfactorily that his deposition could not be taken, or that his personal presence could not be dispensed with, without serious prejudice to the party. 18, 28, 33, 35, 36.

624. In charging mileage for the service of a subpoena, rule or other notice issuing out of the court, it shall be circular and not otherwise, 36, and as far as may be inclusive of all the witnesses or persons notified, and not for each witness separately. 8, 12, 20, 24, 25, 41, 46, 47, 49, 51.

625. In charging mileage for service of subpoena, when two or more witnesses reside at the same place, or in the same neighborhood, full mileage is not to be charged on each, but full mileage to the nearest, and from that to the next, etc. 7, 16, 18, 38, 42.

626. Where the attendance is required of witnesses out of

the county and within the State, mileage for the service of the subpoena on said witnesses, shall not be allowed for any greater distance than would have been allowed had the subpoena issued from the court of the county in which said witnesses reside, nor for any greater distance than actually travelled in making such service. 14.

627. When an attorney who is not resident at the county seat is subpoenaed, he shall be allowed his mileage and fees, as in the case of other witnesses. 24.

628. The costs of the subpoena, the service and mileage, may be charged, although the witness did not attend, and pay and mileage shall be allowed if the witness attend and is not sworn; Provided, the party testify that he believed such witness necessary, at the time he was subpoenaed. 8, 12, 20, 24, 25, 46, 47, 49, 51.

629. The costs of issuing and executing an attachment for a witness shall be taxed to, and paid by the party at whose instance the same was issued, unless otherwise ordered by the court on the return thereof. 20, 25, 37, 46, 47, 49. The officer bringing in a witness on an attachment shall in all cases bring the matter to the attention of the court. 24.

630. No costs shall be allowed for serving a rule to file an affidavit of defense, unless the same was served with the summons or scire facias. 50.

631. If a cause be regularly on the list for trial, all the costs of the term shall be paid by the party at whose instance, or through whose default such cause shall not be tried, 4, 8, 12, 18, 19, 26, 27, 28, 33, 35, 42, 43, 51 (provided a bill be filed within fifteen days after the continuance, 3) unless the court shall order that they abide the event of the suit, 3, 7, 11, 13, 20, 23, 24, 25, 29, 30, 34, 37, 44, 45, 46, 47, 48, 49, and the payment thereof will be enforced by attachment, if not paid, on demand, after bill taxed. 9, 10, 41.

632. The party gaining shall be allowed his costs at each term that the cause may have gone off, provided it was not put off by him, or by his default. 7, 16, 36, 42.

633. When a cause is continued by consent, or by the court on its own motion, the costs shall abide the result of the suit. 10, 18.

634. When a continuance is granted such order may be

made respecting the costs as justice shall require, and when not otherwise ordered, the costs shall abide the event of the suit. 22.

635. All continuances of cases on the trial list shall be at the cost of the party making the application, except where special reasons exist to the contrary, and the court may make such orders as to the time when the costs shall be paid as may be just and reasonable, and enforce such orders by entering judgment of non-suit, or making such other disposition of the case as shall be proper under the circumstances. 6.

636. In cases where an order of court is made that a party who obtains a continuance shall pay the costs of the term, it will be enforced by attachment or otherwise unless the same are paid within twenty days after a certified copy of the bill has been served upon the party who is adjudged to pay them, or his attorney. 21.

637. When a cause is continued in consequence of any amendment of the pleadings, made during the term at which the same is on the list for trial, the costs of the term shall be paid by the party who applied for such amendment, 10, 16, 18, 42: Provided the party applying for the continuance on that ground shall verify his allegation of surprise by affidavit. 24.

638. When a cause is transferred to the bottom of the list, the party through whose default it loses its place shall pay the costs (of the term, 16, 25, 46, 49) until the same is again reached, 24, 25, 37, 46, 47, 49, unless the court otherwise order. 8, 12, 16, 20, 26.

639. Where a rule shall be made upon a party to pay the costs accruing upon a cause put at the foot of the list until it be again reached, the daily pay only of the witnesses shall be charged, including the day when the order is made, and the day when the cause is again reached, unless when reached (the same day, 33) the cause is put off by the party obtaining the rule, or at his cost, in which event the day when the cause was reached shall be excluded. 36.

640. The costs, including the fees of witnesses, of depositions taken out of the county, unless when the witness attends in person, where from the death, sickness, or other inability of the witness to attend, the deposition is read on the trial, shall be taxed and allowed in the costs. 10, 28, 33, 35, 36, 40, 41.

641. The legal costs incurred in taking depositions (includ-

ing the costs of the justice, or other person before whom they are taken, the service of the subpoena and mileage on the same, 7, 11, 13, 34, 38, 44, and the witness fees, 16, 25) shall be allowed the successful party, 7, 11, 16, 18, 19, 20, 22, 24, 25, 38, 45, 47, but not if the witnesses afterwards attend in person at the trial. 6, 9, 13, 34, 37, 44, 48.

642. Where the deposition of a witness residing more than forty miles from the court house is taken, it shall not be necessary to serve him with a subpoena to entitle it to be read, and therefore no costs for such subpoena, or any service thereon, shall be allowed. 11, 13, 22, 23, 26, 34, 43, 44, 45.

643. The actual expenses of executing a commission (including postage and of taking depositions before an examiner or commissioner appointed by the court, 21, 23, 28, 35, 36, 45, and witness fees, 46, 49) may be taxed and allowed in the bill of costs, 21 (subject to a retaxation as in other cases, 8): Provided, that unless specially allowed the amount for executing any one commission shall not exceed twenty dollars (twenty-five dollars, 23, 39, 40) (thirty dollars, 2, 9, 18, 28, 35, 36, 41, 42), (forty dollars, 15), (fifty dollars, 20), and it shall appear to the court that the persons examined were material witnesses. 4, 5, 9, 10, 11, 13, 15, 16, 18, 20, 22, 23, 24, 25, 26, 29, 33, 34, 39, 40, 41, 43, 44, 45, 46, 47, 49.

644. The fees to witnesses out of the State shall be the same as to witnesses attending this court (as at place where taken. 28, 35). The fees to commissioners out of the State shall be as follows:

For every ten words of testimony taken (for first	
ten pages, .03c., 6),	\$ .02
Exhibits, each,	.25
Oath or affirmation, each,	.10
Subpoena, including names,	.50
Attesting and returning commission,	1.50
(For each meeting where no testimony is taken	
through no fault of commissioner, 6, 28, 30, 35, 1.00)	

. And in this State the fees to witnesses, magistrates and constables shall be the same as allowed by law at the place where taken, 28, 30, 35, 37, 48, which fees shall be allowed and taxed against the unsuccessful party, or party directed to pay costs,

when the witness does not attend in person at the trial and the deposition is read. 17, 50.

645. The fees of exemplifications of deeds, papers and records constituting portions of a party's own title, shall not be allowed in his bill of costs; but the fees of copies or exemplifications of other records and documents shall be. 28, 33, 35, 36, 41.

646. If the defendant admits a certain sum to be due, and offers to confess judgment for the same, and the plaintiff declines to accept the offer, then, if the plaintiff fails to recover more than the principal sum admitted to be due, with legal interest thereon, he shall pay all costs legally incurred in the action, after the time of the offer to confess judgment. 14.

647. If the plaintiff takes judgment, under the rules relating to affidavits of defence, for a part of his claim, and proceeds to trial for the balance, if he fails to recover more than the amount of the judgment with interest, he shall pay all the costs of the trial, and judgment for the same shall be entered against him. 43.

648. If a garnishee admits in his answers a certain sum to be due, and the plaintiff fails to recover judgment for a greater sum, exclusive of accruing interest, he shall pay all the costs that shall accrue subsequently to the time when he might have taken judgment for the admitted sum, 17, 28, 30, 35, 36, 37, 48 (including a garnishee's counsel fee, 17); but if he recovers judgment for a greater sum the garnishee shall pay the costs. 2, 3, 4, 5, 6, 9, 11, 13, 14, 16, 18, 19, 20, 21, 23, 24, 25, 26, 29, 32, 33, 34, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50. And the same rule shall apply where the plaintiff fails to take judgment for the amount admitted to be due by the defendant. 3, 5, 13, 27, 43.

649. Where either party has, in the opinion of the court, unnecessarily and improperly caused a false issue to be made, the costs accrued in consequence shall be paid by such party, whatever may be the result of the cause. 16, 39, 42.

650. When a cause has been discontinued, or nonsuited, a second suit against the same defendant will not be entertained until the costs of the previous suit shall have been fully paid, 3, 4, 9, 27, 29, 41, 43; nor need the defendant take any step in the cause until after thirty days notice in writing of such payment. 10, 18.

651. When a petition is dismissed, or a rule, citation, or other process, which is founded thereon, is discharged, the costs of the proceeding shall be taxed against and paid by the petitioner; but when the prayer of the petition is granted, the costs of the proceeding shall be taxed against and paid by the respondent; reserving to the court, however, the right to direct otherwise, in any case. 9.

652. On all rules to show cause the costs necessarily accruing thereon shall be paid by the party losing the same, including fees on deposition, of commissioners and magistrates, and witness fees, service of subpoenas and mileage. But where the evidence satisfies the court that such expense was incurred by way of exploration, or that the testimony was irrelevant or incompetent, in that case such costs on depositions shall not be taxed against the losing party. 33.

653. When any matter on or proper for the argument list shall have been adjudicated without making any disposition of the costs incurred in and about such matter, such costs shall be paid by the party against whom the adjudication has passed, unless otherwise ordered. 3.

654. When a party appeals from an award of arbitrators or report of viewers, he may at the same time file exceptions to the bill of costs of the other party and thereupon the prothonotary shall retax the same on ten days notice in writing, to the parties, from which retaxation an appeal may be taken to the court as in other cases; and the amount of costs covered by the exceptions, shall be paid into court by the prothonotary, there to remain until the question is decided. 19.

655. The fees of jurors upon an inquest of damages, and of struck and special jurors attending a view, and of the sheriff for summoning and returning them, shall be taxed in the bill of costs. But in no case will the party be allowed the expense of more than one view, unless the cause has been continued through the default of or by the adversary. 36.

656. The expense of surveys, examinations and diagrams made by an artist or artists, appointed by the court, shall be paid (as ordered by the court, 12) by the party obtaining the rule (shall be fixed at the time of their appointment, 20) and (if both parties agree thereto, 11, 17, 39) shall be taxed and allowed to the successful party in his bill of costs, 5, 6, 10, 18,



37, 39, unless the court shall think that the rule was entered without sufficient cause. 14, 16, 20, 27, 28, 33, 35, 36, 40, 42, 46, 47, 49.

657. All costs and fees shall be itemized by the proper officers in accordance with the fee bill in force, as they accrue from time to time, and shall be entered in ink on the margin of the docket in every case. They shall likewise be itemized in ink by the proper officers on all writs of execution. 2.

658. Upon all judgments the prothonotary shall note on the margin of the docket, the whole amount of the taxable costs, specifying the items belonging to each officer and the party. Upon the return of any writ in an action he shall enter the costs of the sheriff on that writ, upon the appearance docket, and upon the recovery of a judgment in such action, the costs of the officers up to that time, and the party's bill for witnesses shall be fully noted, and a note shall also be made of all execution costs subsequent to judgment. 23.

659. The prothonotary shall on the margin of the record in every case, state in itemized form, the fees charged in accordance with the law allowing and appointing fees to such officers. 24.

660. No amount will be fixed for the fees of any auditor, master or other person, whose compensation it shall be the duty of the court to determine, without the parties in interest or their attorneys shall have filed a statement in writing of the amount they considered proper therefor, or such auditor, master, or other person, shall file an affidavit stating the amount which he considers a reasonable compensation for his services in the premises. 5.

661. The sheriff for executing or serving any writ, order, decree, notice or process, shall return therewith an itemized statement of his fees in accordance with the law allowing and appointing fees to that office; otherwise the prothonotary shall not tax the same in the case, and unless itemized by the court or judge, on motion, shall strike the same off; either party may file exceptions to the costs so itemized, and the legality of the same shall be determined by the court. 24.

662. The expenses of advertising the sheriff's sale of real estate shall be taxed with his costs: Provided, that the same shall in no event exceed the usual printer's rates in other

cases, 19 (and no allowance will be made for advertising notice of such sales in more than two newspapers, unless by special order of the court, 18, 27, 36) (it shall be the duty of the sheriff to make out a bill showing the amount actually paid for the printing of said notices, 7.) If sales be advertised in more than two newspapers the aggregate charges therefor shall not exceed the usual rates for two papers. 18.

### COURT OFFICERS

663. A standing Committee of Investigation will be appointed from time to time to inquire whether the several officers conform to the rules of court and Acts of Assembly, affecting their duties in connection with the business of the courts, the administration of justice therein, and the charging and collection of fees and costs. Said committee is charged with the duty to examine, report and take such action as may be needful to enforce the requirements of the said laws and rules. And it shall be the duty of all officers, deputies, clerks, and other persons having custody or possession of the records, documents and papers of the several public offices affecting the business of the court, and they are directed to submit the same to the free and unobstructed examination of the committee whenever and as often as requested. 7.

664. No person or persons shall be admitted inside of the bar during the sessions of the court except members of the bar, officers of the court, county officers, clients accompanied by their counsel, or persons introduced by the court or attorneys; and the officers are instructed strictly to enforce this rule. 16, 24.

### COURT ROOMS

665. The court and jury rooms, and all other rooms erected and set apart for the accommodation of the courts, and hallways and approaches thereto, shall be and remain in the control of the court. The keys of the same shall be in the custody of the crier or other officer designated by the court. Persons having keys to any of said rooms shall deliver them to said officer, unless they retain them by direction of the court. During the terms and sessions of the court, and the hours of adjournment

and recess, the officers will not permit any person, under any pretext whatever, to occupy, remain in or use the said rooms other than under the authority of the court. 7.

666. During the daily adjournments of the courts the front and rear doors of that part of the building assigned for the use of the court are to be kept securely locked, to the exclusion of every one except the officers in charge. 7.

667. No persons except officers of the court, witnesses and jurors, whose duties call them there, will be allowed to loiter in the corridors or rooms in the rear of the court room, and whenever a jury shall be out deliberating no constable or other officer or person shall be allowed upon the upper floor, or stairway leading thereto, except the sworn officer having the jury in charge, nor to converse with said officer, and no person will be allowed to communicate with or speak to any juror, after the jury has been charged, and during their deliberations, unless by the express leave of the court. Any person found attempting to communicate with any jurymen after the charge has been delivered, either outside or inside the court-house, shall be brought before the court for punishment. 7.

668. The court-rooms will not be used by persons for the purpose of lunching or eating, the drinking of liquor and card playing is strictly prohibited, and every act of misbehaviour, disorder, or uncleanness will be promptly prevented by the officers. 7.

669. The failure or neglect of any court officer to enforce these rules will be cause for instant dismissal. 7.

### **DAMAGES**

[See Assessment of Damages and Condemnation Proceedings.]

### **DAMAGES AND MESNE PROFITS**

[See Ejectment.]

## DEPOSITIONS

[See also §§ 306, 641, 642 and 643.]

670. No rule to take depositions (except those of ancient, infirm, or going witnesses, 14, or on commission, 16) shall be executed, or commission taken out by the plaintiff, if objected to by the defendant, until he shall have filed his statement, or furnished the defendant with a bill of particulars of his claim in cases where it is necessary; or by the defendant, if objected to by the plaintiff, until he shall have given bond, or special bail, or been committed to prison, in suits commenced by *capias*, or entered his appearance in those by summons, 7, 16, 38, 42, unless otherwise ordered, in either case, by the court, or a judge in vacation, on sufficient cause shown. 14, 36, 39.

671. A rule may be entered as of course for a commission to examine witnesses upon interrogatories (within the State and out of the county, 39), to any of the United States, or their territories, or to foreign parts. The interrogatories must be filed in the prothonotary's office at the time. The notice served with (a certified copy of, 6, 30, 39, 48) the rule must contain the names of the commissioners (and their places of residence, 3, 6, 17, 18, 25, 28, 35, 36, 39, 45, 50 or their office titles, 2, 8, 11, 21, 23, 26, 29, 34, 43, 44, 51) (and the names of the witnesses, 27, 39) (and must be accompanied by a copy of the interrogatories filed, 23, 26, 27, 29, 32, 37, 42, 50). The adverse party may file cross-interrogatories, and nominate commissioners on his part, 1, 2, 4, 6, 7, 8, 11, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 29, 30, 32, 33, 34, 38, 46, 47, 48, 49, 51 (giving the address; and when more than one commissioner is nominated, the commission shall be joint and several. 39, 42). Additional interrogatories may be filed by either party on giving five days notice. 9, 10, 14, 17, 18, 28, 35, 36, 37, 40, 41, 45, 50.

At least fifteen days (five days, 4, 16, 41) (ten days, 11, 17, 21, 22, 26, 29, 30, 34, 44, 48, 50) (fourteen days, 39) notice shall be given the adverse party before the commission issues, 1, 2, 5, 6, 7, 10, 15, 16, 17, 18, 19, 22, 24, 27, 28, 30, 32, 33, 34, 35, 36, 37, 39, 42, 47, 48, 50; but the court may, on motion, grant a rule for a commission on shorter notice, 4, 41, and direct the applicant to name his commissioners and file his interrogatories by a particular time, and the opposite party to file his

cross-interrogatories and name commissioners, within such time as they may deem proper, or that the commission issue *ex parte*. 8, 9, 11, 12, 20, 21, 23, 25, 26, 29, 40, 43, 44, 45, 46, 49, 51.

672. The last of the interrogatories to take testimony shall be stated in substance thus: "Do you know or can you set forth any other matter or thing, which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer." 6, 18, 19, 37.

673. The prothonotary shall annex to every commission issued by him a printed copy of the Letter of Instructions to the Commissioner approved and adopted by the court, 39, and it shall be the duty of the person taking the deposition faithfully to observe said instructions. Similar instructions shall be annexed to a rule for taking depositions within the State, when interrogatories and cross-interrogatories, either or both may be filed with the *præcipe* for the rule. 27.

674. If either party object to any of the interrogatories filed by the opposite party, he shall, within 24 hours after receiving a copy of the same, give notice in writing of his objections to the party filing the same, or to his attorney, who shall on reasonable notice submit the same to a law judge for his allowance, and only the interrogatories allowed shall be annexed to the commission. 14.

675. On the return of a commission it shall be opened only by the prothonotary, 2, 3, 11, 13, 19, 22, 23, 26, 40, 43, or in his absence by his proper deputy, or the judge of the court; a minute of the opening and the time thereof shall be made and subscribed by the person who opens it; and where the papers enclosed are found by him detached, he shall attach them together; or if it be inconvenient to do so, shall note the papers or exhibits found therein, and subscribe the said note; which said note or notes shall be sufficient evidence of compliance with this rule and of the identity of the accompanying papers or exhibits. No papers or exhibits attached to or accompanying a commission shall be detached or separated therefrom, except by leave of the court, or the written agreement of the parties. 17, 18, 28, 35, 36, 45, 50.

676. When a commission has been returned and filed, the

prothonotary shall give prompt notice thereof to the respective attorneys, 2, 10, 15, 19, 30, 37, (and shall endorse thereon a minute of the time and manner of notice and to whom given, 3, 9, 14, 33, 41, 42,) or if either party have no attorney, shall put up a written notice thereof in his office; a minute of which notice subscribed by the officer shall be sufficient evidence of compliance with this rule. 40. If the said notice be not given, the deposition shall not be read, and the party suffering thereby shall be entitled to a rule on the prothonotary, to pay all the costs he shall incur in consequence of such neglect. 17, 28, 35, 36, 50.

677. A rule to take the deposition of aged, infirm and going witnesses, to be read in evidence on the usual terms, is of course, and may be entered by either party stipulating (reasonable notice, 3, 10, 21, 33) (forty-eight hours, 1, 16, 32, 39) (five days, 6, 23, 30, 48) (six days, 7, 38) (ten days, 9, 20, 24, 41, 47) (varying time according to distance, 5, 14, 17, 18, 27, 28, 35, 36, 37, 42) notice to the adversary, 3, 7, 9, 10, 16, 24, 32, 33, 42: (Provided, the party file an affidavit of the facts necessary to entitle him to such rule. 5.) But the court may order a shorter notice in any case where the exigency thereof may require it. 1, 6, 14, 17, 20, 23, 27, 28, 30, 35, 36, 37, 38, 39, 41, 47, 48.

678. Rules to take the deposition of witnesses within the State (in any question to be decided solely by the court, 47) (without regard to their being aged, infirm or going witnesses, 1, 32) are of course, and may be entered by either party on ten days notice (forty-eight hours if in the county, and seven days if not, 39) (five days, 3, 47) (five days if in the county and ten days if not, 15, 17, 21, 28, 35) (eight days, 1, 32) (ten days if the place of taking is not more than 150 miles from the court house, and fifteen days if it exceeds that distance, 11, 13, 23, 26, 34, 43, 45) (fifteen days, 42) (twenty days, 38) to the adverse party, 1, 3, 17, 21, 32, 34 (stating particularly the time and place of taking them, 3, 5, 16, 22, 38, and the name of the magistrate before whom it is intended to take them, 8, 12, 29, 51) (the number of days notice need not be stipulated in the rule, except when specially allowed by the court or a judge; nor need the authority before whom the deposition is to be taken be named in the notice. 28, 35, 36). The court, or any judge in vacation, will on application and cause shown, grant

rules for the same purpose on shorter notice, 2, 4, 7, 8, 11, 12, 13, 15, 19, 20, 23, 25, 26, 38, 39, 43, 44, 45, 46, 49, or enlarge the time. 28, 35

679. Rules to take the depositions of witnesses within the State may be entered by either party, of course, in the prothonotary's office. Depositions out of the county shall be taken on ten days notice, and within the county on five days notice; but if the witnesses be ancient, infirm or going, they may be taken in any part of the county on two days notice, 50, upon filing in the office an affidavit of the facts necessary to entitle the party to take the same on such short notice, and on objection made at the trial, or hearing, or before, the affidavit shall be prima facie evidence of the facts contained in it. 18, 40.

680. Rules to take the testimony of competent witnesses, other than those who are ancient, infirm and going, will be granted upon special application to the court, or a judge thereof, accompanied by affidavit, showing cause therefor. 6.

681. The parties, their agents or attorneys, may by agreement take the testimony of witnesses out of the State by rule of court, before any judge, magistrate or minister of justice (upon such notice as they shall stipulate, 39) and it shall have the same effect as if taken by virtue of a commission. 7, 8, 12, 16, 20, 21, 25, 29, 38, 39, 46, 49, 51.

682. Whenever application shall be made to the court, or a judge in vacation, under the Act of 25th June, 1895, for a rule to take the testimony of witnesses residing beyond the limits of the Commonwealth, it must be shown that notice of the intended application has been served on the opposite counsel, 7, at least three days before the application is made. 12.

683. No party shall be entitled to compel the deposition of the adverse party in advance of the trial, except upon an order of the court, upon notice and cause shown. 1, 14, 16, 20, 23, 37, 39.

684. The testimony of witnesses shall be taken by deposition, when necessary and no oral testimony (except that of officers of the court, 21) shall be heard upon argument to the court alone, 12, 16, unless by the special leave of the court, 7, 8, 9, 10, 11, 14, 20, 22, 23, 26, 27, 28, 29, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 49, 50, and no ex parte affidavit shall be read to the court, except as a ground for a motion or a rule to show

cause, 47 (or when affidavits are specially provided for, 41), but a rule may be entered at any time, by either party, in the prothonotary's office, to take depositions to be read to the court in any case for argument, 25, on not less than ten days (five days, 4, 24) notice to the opposite party, or his counsel of record. 4, 19, 24, 40, 51.

685. Where the taking of testimony is necessary to the disposition of a motion pending, it may be taken in open court, or by depositions, at the convenience of the parties. 4.

686. On all motions or rules to show cause, on the hearing of which facts are to be investigated, the testimony of witnesses shall be taken by depositions upon (forty-eight hours, 1) (five days, 2, 8, 11, 21, 23, 26, 34, 43, 44, 45, 46, 49) (ten days, 20), (reasonable, 14) notice in writing to the opposite party or his attorney, 2, 14 (and no witnesses shall be examined at the bar but by a special and previous order of the court. 1, 5, 23, 32). But the court or any judge in vacation, upon application and cause shown, may grant rules to take such depositions on shorter notice. 8, 11, 20, 21, 26, 34, 43, 44, 45, 46, 49.

687. On the hearing of any motion or application, after a rule to show cause has been granted, no affidavit shall be read, unless notice has been given to the opposite party of the time and place of taking. 13, 25, 26, 30, 43, 45.

688. A rule to show cause in any matter shall in all cases be considered as embracing a rule to take depositions, 30, and rules may be taken and commissions issued and proceeded in as in other cases. 5, 14, 23, 39, 40, 41. On the hearing no deposition otherwise taken, or ex parte affidavit, shall be read. 9, 16, 18, 27, 28, 35, 36.

689. The court will grant rules to take the testimony of witnesses on shorter notice than is provided by general rule, upon cause shown, 18, 34, 40, and in case of the absence or inability to attend of the person before whom the deposition is to be taken, at the time and place mentioned in the rule, the deposition may be taken with like effect before any other competent person, resident at the county seat, and in such case the place may be changed to the office of the person thus substituted, on notice of one hour to the adverse party or his attorney. 21.

690. No deposition may be read unless notice of the time and place of taking the same has been given to the opposite



party, his agent or attorney, in order that he may have an opportunity to cross-examine. 8, 12, 16, 25.

691. Notice to take depositions in the State shall be served on the party, if he live in the county. If his residence is not in the county the service may be on the attorney, forty-eight hours notice being required if the depositions are to be taken at the county seat: Provided, that if there be more than two persons, parties to the suit, against whom the depositions are to be offered in evidence, residing in the county, it shall be sufficient to serve the notice on two of them, and on the attorney of the others. 42.

692. Rules and notices to take depositions and for commissions to issue, shall be served on the (party unless waived in writing, 16) attorney of the party (or the party himself, 12, 51), unless when at the time of service the party resides in the county and objection be made with a request by the attorney that the service shall be upon his client, accompanied by information of his residence, if asked for. 10, 14, 27, 28, 35, 36, 40, 41, 50. In cases of joint parties, service on one of them shall suffice for all. 16, 39.

693. In cases where the party is not in default, or in extreme cases, a cause may be continued, at the discretion of the court, to allow the requisite notices to be given. 18, 28, 35.

694. The notices to be given under these rules shall name the time and place of taking the deposition, the names of one or more of the principal witnesses to be examined, 30, and the name of the officer before whom they will be examined. 6, 37, 48.

695. In giving notice of the time of taking depositions, it shall be sufficient to state the period of commencement, leaving the party on the other side to take notice of the adjournments; and it shall not be a valid objection to any deposition that the person before whom it was taken adjourned the proceeding from time to time, 9, 27, 41, if such adjournments were necessary. 21.

696. If either party finds it inconvenient to attend at the time and place appointed for taking depositions, he may transmit legal interrogatories to the person authorized to take the deposition, who shall put the same to the witnesses, and reduce the answers to writing, 4, 8, 11, 12, 13, 20, 21, 23, 24, 26, 29, 30, 34, 37, 43, 44, 45, 46, 47, 48, 49, 51, and return them with the deposition. 6, 25.

697. All depositions of witnesses under a rule of court, to be used in evidence, shall be taken before a judge, magistrate, notary public (or commissioner appointed by the court, 1, 2, 23), (alderman, justice of the peace, prothonotary, clerk, or any other person empowered by law to administer oaths, 7, 38), or before an examiner appointed by the court, 32, or agreed on by the parties by writing filed in the office, who shall be deemed to be appointed by the court, and have power to administer oaths. 39.

698. Depositions shall in all cases be taken before some person lawfully qualified to administer oaths. 3, 5, 8, 12, 14, 16, 22, 27, 28, 29, 30, 35, 36, 38, 42, 51.

699. The testimony or depositions of all witnesses resident in this county, on all rules issued out of the several courts in said county, in matters to be disposed of solely by the court, shall be taken before commissioners, who have been or may hereafter be appointed by the court, and the commissioner before whom the depositions are to be taken shall be named in the præcipe for the rule. In case of the inability to act of the commissioner named in the rule, the deposition shall be taken by the commissioner whose office is nearest the office of the one named in the rule, at his office, unless otherwise agreed by the counsel concerned. The testimony of sick, aged or infirm witnesses may be taken otherwise than as herein provided, by permission of the court, or a judge in vacation, on due proof of sickness, etc. 41.

700. A commissioner or examiner appointed by the court shall take the depositions of witnesses offered by a party, on five days notice to the opposite party, his agent or attorney: Provided, that no notice shall be required when such opposite party is not resident in the county, and has no attorney of record. 22.

701. Depositions taken by other than the officers named in the notice under a rule, or in a commission, shall not for that reason be rejected: Provided, it is made to appear that the person taking them had competent authority to administer oaths, and any good reason is given why the person designated did not officiate. 6, 37, 48.

702. Depositions taken on a commission or rule of court and intended to be read in evidence on the trial of a cause,

shall be written by the witness himself, or the judge, magistrate, or commissioner before whom the same shall be taken, or in his presence by some disinterested person with the consent of the parties or their counsel, or else they shall not be read. 18, 28, 35, 36.

703. In taking depositions, the evidence shall be taken down in the first person singular, as delivered by the witness, and the questions or cross-questions shall not be written out, unless at the request of the opposite party present at the examination. 6, 30, 37, 48.

704. On a rule to take depositions, the examination of the witnesses must begin at the time specified in the notice, but if the depositions cannot all be written out in a day the examination may be continued on the next day, and so on until finished. 39.

705. If the party taking out the rule shall not appear and commence taking the testimony within an hour of the time fixed for commencing, the rule shall fall, unless counsel shall consent to a continuance. 2.

706. Depositions, except those in rebuttal, must be closed eight days before the week in which the case is set down for argument. 2.

707. In matters for argument, where testimony is necessary, the parties must be diligent in taking the same, otherwise the cause will be disposed of in its order. 50. But exceptions of law merely, and other exceptions, as to notices, etc., not affecting the merits of the case, shall be put down at once upon being filed, and the testimony confined thereto until the same have been disposed of. 17.

708. The petitioner or applicant in any case where allegations of fact are denied or required to be proved, shall close his testimony within twenty days after notice of the filing of the answer of the opposite party; the testimony of the respondent shall be closed within twenty days after the closing of petitioner's testimony; and all testimony must be taken at least three days prior to the argument court at which the case is to be heard. 16. But the court upon proper cause shown may extend the time for taking testimony. 46, 49.

709. All depositions taken on rule or commission shall be returned by the officer to the prothonotary in a sealed envelope,

and by him filed, and notice shall immediately be given to the parties or their attorneys, by the prothonotary, by mail or personally, and he shall note upon the docket the time of giving such notice. 6, 30, 37, 48.

710. Depositions must be delivered to the prothonotary with all convenient speed as soon as they are taken, and if wilfully withheld shall not be read. The prothonotary shall give notice orally or in writing to the parties or their respective attorneys, of the return of any commission and of the filing of depositions, and endorse thereon the fact and the time of notice. 16, 39, 42. If the notice be not given, the deposition, if objected to, shall not be read, and the party suffering thereby shall be entitled to a rule on the prothonotary to pay all costs he shall incur in consequence of such neglect. 18.

711. Every deposition taken in a case pending in court must be returned by the commissioner to the prothonotary, by whom it must be opened and immediately filed of record. The prothonotary is directed to endorse this rule upon any commission taken out of his office. 51. Other depositions must as soon as taken be also returned and filed. 12.

712. A commissioner or examiner appointed by the court to take testimony shall file his report on or before the first day of the term following his appointment, and thereupon the testimony in the case shall be closed without further order: Provided, that the court may, on cause shown, enlarge the time for filing such report, or permit additional testimony to be taken 22.

713. Depositions to be used in the argument of any case upon the argument list, taken by the party moving in such case, shall be filed at least six days before the day fixed for the hearing, and counter depositions taken by the opposite party shall be filed at least one day before the same. If filed after that time they will not be considered by the court. 45.

714. Depositions shall be filed in the prothonotary's office, to the term and number of the cause or proceeding in which they are taken, within a reasonable time after the taking, 4, 22, 23, (generally within fifteen days therefrom, 17, 50) (before or during the next term, 8, 29) and notice thereof given to the opposite party; but the party at whose instance they were taken may retain their custody: Provided, a true copy of the rule, notice and depositions, and of the papers and exhibits attached thereto,

if any, be given to the opposite party, or his attorney within a reasonable time, 8, 17, 50, and if notice of the filing or a copy be not given as aforesaid, the deposition shall not be read. 18, 28, 35, 36, 40.

715. All depositions which shall be taken to be used in evidence in any cause to be tried or argued in this court, shall be filed within ten days after the same shall have been taken, if taken within the county, or within twenty miles thereof, and allowing one additional day for each twenty miles beyond such specified distance. But if such depositions shall be taken within ten days (or within such additional number of days, according to the distance of the place where they may be so taken) before the court, in any cause which shall be marked for trial at such court, such depositions shall be filed on or before the first day of such court; and the time of filing the same shall be endorsed thereon by the prothonotary; otherwise such depositions shall not be read in evidence. The justice or other officer before whom any depositions shall be taken, shall note on the same whether both or only one of the parties or their counsel attended at the time of taking the same (and this direction shall be included in the rule, 2) and notice of the filing of them shall be given by the party taking them or by his attorney, in writing, to the counsel of record of the opposite party, within two days after they shall have been filed, unless such party or his counsel attended at the taking thereof. 19.

716. Depositions taken within the district shall be filed in the proper office within two days after demand and notice in writing by the opposite party; and if taken out of the district and in the State, then within ten days after such demand and notice; otherwise the same shall not be read on the trial, unless the party offering them shall satisfy the court that it was not in his power to do so within the time, and that he did so as soon after as it was reasonably in his power to do so. 7, 38.

717. If any deposition shall be wilfully kept or withheld by a party or his attorney, or if such party or his attorney shall refuse to file it immediately after demand made by the opposite party or his attorney, such deposition shall not be read except by consent. 16, 42.

718. To entitle depositions to be read in evidence, the same must be returned and filed within twenty days (ten days, 14)

(a reasonable time, 43) from the time they were taken and certified: Provided, that the court may at any time order otherwise, on sufficient cause shown, and direct the depositions to be filed nunc pro tunc. 14, 21, 26, 27.

719. When a deposition has been taken under a rule of court, and is in possession of the party having taken the same, the adverse party may serve a notice on the party having such deposition in his possession, or on his attorney, requiring him to file the same in the office of the prothonotary within ten days, and on failure to comply with such requisition, the party then in possession of the depositions shall not be permitted to make use of the same as evidence on the trial of the cause. 10, 20, 24, 25, 33, 46, 47, 49.

720. The court, on sufficient cause shown, may make a special order for filing any deposition, with the papers attached, which has been taken under a rule or commission. 8, 20, 24, 25, 46, 47, 49.

721. Depositions once on file shall remain there subject to the inspection and use of both parties, and neither party shall be allowed to withdraw them from the files for a period exceeding five days, without first furnishing the opposite party or his attorney an exact copy of the same, together with the rule, notice and exhibits attached. 6, 37, 48.

722. (Where notice has been given of the return of a commission or the filing of depositions, or a copy thereof has been delivered to the opposite party, 28, 35, 36, 40) neither party shall be allowed to file exceptions to the manner of the execution or return (to the interrogatories, answers, certificates or other formal matter, 12) unless he shall within ten days (five days, 12, 16, 19, 42, 51) (seven days, 39) (fifteen days, 6, 7, 15, 37, 38, 48) (twenty days, 2, 4, 11, 13, 24, 34, 43, 45, 47) (thirty days, 25) after notice or knowledge of the return, have filed specific exceptions thereto, 2, 6, 7, 12, 14, 19, 30, 37, 38, 39, 46, 48, 49 (otherwise all objections to notice or want thereof, or to the formal execution of the commission, or to the rule, or manner of taking the depositions, or mode of swearing the witness, or to any acts or omissions of the commissioners or other officers, or of any other person in or about the same, or other objection to the proceeding itself shall be considered waived (8, 11, 13, 20, 21, 23, 24, 26, 28, 35, 36, 43, 45) and no exceptions not contained in said specifi-

cations shall be allowed, unless it be to the competency of the witness himself, or of the evidence, in the same manner as if the witness were before court, and upon his examination orally in court, 1, 4, 10, 16, 17, 18, 25, 28, 32, 35, 36, 40, 42, 47, 50, 51: Provided, nothing herein contained shall sanction the reading of the deposition of a witness residing in the (county, 11, 13, 23, 26, 33, 34, 43, 44, 45) State, and within forty miles of the county seat. 22, 32.

723. When exceptions have been filed, or a motion made to suppress the deposition or commission, the case may be put upon the argument list by either party, and be disposed of prior to the trial of the cause, and shall not be open for reargument on the trial, but either party may take exception to the ruling of the court at the time, 6, 19, 21, 22, 30, 37, 39, 48: Provided, the motion for such decision is made within ten days after the exceptions are filed. 1, 20, 32.

724. But when the objectionable matter is not apparent on the face of the proceedings, and is discovered at an after time, the party may give notice of his objection in manner aforesaid, within ten days after it comes to the knowledge of himself, or his attorney: Provided, that if the return and filing of depositions taken under a commission or rule, be less than ten days before the first day of a term at which a cause is to be tried, the depositions may be read at a trial without notice of their filing being given, and objections may then be made without exceptions being filed. But if the cause be continued at that time, notice must be given and exceptions filed according to the rule, otherwise the depositions shall not be read, or the objections shall be overruled. Objections specified under this rule may be heard at the trial, or on the application of either party before the trial, upon a motion to suppress the depositions, or to disallow the exceptions. 18, 28, 35, 36.

725. Exceptions to defects and irregularities which might have been obviated by retaking the depositions, shall be filed within fifteen days after notice of the filing of the depositions, and shall be disposed of before the trial, and if possible before the cause is placed on the trial list; the decision of the court disposing of the exceptions will not be reviewed at the trial, but a bill of exceptions thereto will be signed upon request; exceptions to leading interrogatories must be taken and disposed

of before the commission issues ; all exceptions not disposed of as herein required shall be taken to be waived. 3.

726. The prothonotary shall notify the respective attorneys of the return of a commission ; and depositions other than those taken on commission shall be filed, and notice thereof given to the opposite party, or his attorney, within ten days after they are taken and certified, or they may be retained and a true copy thereof, with the certificate and exhibits attached thereto, given to the opposite party, or his attorney, within ten days ; and all exceptions to depositions, whether taken on commission or otherwise, shall be specified and filed within ten days after the service of such notice or copy, and such exceptions shall be entered immediately on the argument list by the prothonotary, and be disposed of before the trial of the cause : (Provided, in case the deposition is not filed, or a copy given to the opposite party or his attorney as herein provided, the deposition shall not be read on the trial, except by or with the consent of such opposing party or his counsel. 5). No other objection to any deposition, except as to the competency of witnesses, or relevancy of the testimony, will be allowed on the trial, 5, nor will the question then be reconsidered, but a bill of exceptions will be signed at the trial, if required, in the same manner as if the objection had been taken during the trial. 14, 27, 29.

727. When it appears to the court that the party taking out the rule is surprised at the testimony of the witness, and for this or other sufficient cause shown, does not intend to use the deposition on the trial, he shall give prompt and immediate notice of such intention to the adverse party, and in such case the adverse party will not be permitted to read the deposition on the trial if it shall appear that by reasonable diligence he could have subpoenaed and procured the attendance of the same witness, or taken his deposition on a rule of his own after service of said notice. If on the case shown the adverse party is not permitted to read the deposition, the party taking the rule may be directed to pay the costs of taking the deposition, together with the reasonable expenses of the adverse party for his attendance at the taking of the same, or such other order may be made respecting the costs as may be reasonable and just. 40.

728. Deposition taken at any stage of a case may be read, if otherwise competent, in any subsequent proceedings, in the



same case, 17, 50: Provided, the witness reside out of the county, or for other reason his attendance cannot be procured. 6, 28, 30, 35, 37, 48.

729. Where the witness whose deposition has been taken resides without the county, and more than forty miles from the court house, it shall not be necessary to subpoena him to entitle his deposition to be read. 22.

730. Notwithstanding a rule has been obtained for taking the depositions of witnesses to be read in evidence at the trial of the cause, in case of the death, absence out of the State, or other legal inability of such witness to attend, yet the party offering any such deposition in evidence shall satisfy the court that the witnesses, if resident (within the county, 4, 5, 10, 12, 17, 29, 30, 40, 42, 46, 48, 49, or within twenty miles if out of the county, 8, 12, 51) within the State, 14, and within forty miles of the place of trial, were duly subpoenaed, and that due diligence was used to procure their attendance, or that they could not be found after reasonable pains taken for that purpose, otherwise the same shall not be admitted, 1, 2, 4, 5, 7, 8, 10, 12, 16, 17, 19, 20, 21, 22, 24, 25, 27, 29, 30, 32, 33, 38, 39, 40, 42, 46, 48, 49, 51; and if such witnesses reside within the county, such depositions shall not be read upon the trial, unless it be proved to the satisfaction of the court that they are unable to attend, 3, 9, 11, 13, 23, 26, 34, 41, 43, 45, 47: Provided, that this section shall not be held to exclude the deposition of any practising attorney residing in another county when the courts of the county where he resides shall hold court during the week in which such depositions shall be offered in evidence. 44.

731. No deposition of witnesses, or evidence taken under a commission, shall be read in evidence upon the trial of any cause, if the witness be present in court, and then competent to testify. 45.

732. Writs of habeas corpus to produce witnesses to testify in court will not be granted, except in cases in which such prisoners are parties.

In all other cases, and in proceedings before auditors, arbitrators in cases pending in court, referees, commissioners, examiners and masters, the testimony of prisoners shall be taken in the place of imprisonment. 1.

**DISCOVERY**

[See Bills of Discovery.]

**DISTRIBUTION**

[See also §§ 1084, 1365 and 1366.]

733. On the days fixed for the acknowledgment of sheriff's deeds, the proceeds of the sale of real estate by the sheriff will be distributed. 23.

734. Whenever money has been made on a writ of execution, and the return day thereof has arrived, it shall be the duty of the sheriff to pay over the money to the party or his attorney who may be entitled thereto, unless an affidavit is made and filed stating that there is a controversy between different claimants as to appropriation of the same, and setting forth the names of the parties, and the nature of their claims; of which affidavit notice must be given to the sheriff. The money must thereupon be brought into court by the sheriff for appropriation, and will be deposited in bank, in the name of the court, pendente lite, or be invested in some sufficient security at the discretion of the court. 8, 9, 12, 20, 41, 51.

735. Where the proceeds of any judicial sale are to be distributed, the court will on motion made in open court and filed, direct the prothonotary to place the case upon the argument list for hearing before the court, and if all persons interested in the fund do not voluntarily appear such order will be made in regard to notice as the circumstances may require. 4.

736. Every application to the court for distribution of moneys arising from judicial sales shall be in writing, signed by the party or his attorney, and referring specifically to the case in which the same arises; and no application will be received unless the money be paid into court. Upon such application the court may, in its discretion, refer the matter to an auditor to examine the liens and claims, and report a distribution, 28, 33, 35, or may decree a distribution without such reference. 18.

737. When real estate is sold by virtue of an execution and no rule is taken on the sheriff to pay the money into court, the court will decree distribution of the fund with the assent of the parties in interest in the following manner :

The sheriff shall report to the court a schedule of distribution of the proceeds of said sale according to the list of liens on the property sold as certified to him from the record by the proper officers, which schedule and list of liens he shall attach to his return of said writ; whereupon the said return and schedule shall be read in open court on the Thursday of the second week of the term, or on some day to be then specially assigned for that purpose; and if the distribution so reported shall not be disputed or questioned, within fourteen days thereafter, it shall be final and conclusive and be marked by the court, and an order shall be entered that the sheriff proceed to pay out, in accordance with his distribution so reported and confirmed, the moneys mentioned in his return. But if exceptions are filed within the time limited, the court will proceed to hear and determine the same as in other cases of dispute as to the distribution of the proceeds of sheriff's sales. 6, 39.

738. Whenever the aid of the court is desired in the distribution of money in court, or in the hands of any collecting officer of the court, the party asking its interposition shall present to the court a sworn statement of the facts, showing its necessity or propriety, and thereupon the court may appoint an auditor to report the facts, and make distribution, or make such other order as may seem best calculated to bring the matter to a speedy close. 6, 37 48.

739. When the proceeds of a sheriff's sale are in court for distribution (an auditor will be appointed for that purpose, at the request of one having a claim against the fund; or if an auditor is deemed unnecessary, 39) any one claiming the fund or part thereof may apply to the court, setting forth the sheriff's sale, the sum raised, the amount of his claim, and the judgment or other lien on which his right is founded, and praying for a rule on all persons interested to appear on a day certain and show cause why the fund should not be distributed according to a schedule of distribution filed in court with the petition, and the amount of his demand paid over to him. 42. He shall annex a list of liens remaining open on the record, and if the parties interested do not all appear, such notice shall be given of the rule personally or by advertisement as the court may direct. 39.

740. A list of the liens remaining open on the record shall

be filed with the petition, and if the parties interested do not all appear, such notice shall be given of the rule, personally or by publication in the newspapers, as the court shall think proper to direct. 42.

741. The sheriff shall make out and present to the court, with his deed or deeds for the property of any defendant or defendants sold on execution process, a distribution of the proceeds of the sale or sales, in the form of a decree of distribution accompanying the same with a certified list of liens; and upon the acknowledgment of the deed or deeds, the prothonotary shall endorse such decree of distribution, confirmed nisi, which confirmation shall become absolute, be entered at length by the prothonotary in a book kept for that purpose, and the money paid out accordingly, unless within ten days thereafter, exceptions verified by affidavit, in so far as the ground thereof is not apparent on the record, be filed. 10.

742. The failure of any of the parties in interest to dissent in writing from the distribution of money in the hands of the sheriff, within the time in which exceptions may be filed, will be deemed to be an assent under the Act of 28th June, 1871 (P. L., 1376). 10.

743. If the exceptions filed cover only part of the liens to which the fund is distributed, the court may, in its discretion, confirm the decree as to the unexcepted items, and refer those contested to an auditor. If no exceptions be filed, as soon as the schedule is confirmed absolutely the sheriff shall pay out the money accordingly. 10.

744. In no case will distribution be made until the proceeds of sale are actually paid into court, or the parties agree to so consider it. 23.

745. Unless all parties in interest consent thereto (or the applicant is the officer holding the fund, 36) no auditor will be appointed to distribute money made upon execution until the sheriff, or other officer having made the judicial sale, shall have paid the proceeds of sale, including the amount of costs, into court. 14, 17, 18, 28, 35. Where the officer presents the petition he shall thereby be considered as having the money in his hands and be liable therefor. 27, 36, 50.

746. In every case where money is required to be paid into court before an auditor can be appointed, the bank book con-

taining the entry of the money shall be shown to the court at the time of asking for the appointment. 11, 45.

747. On the several days appointed for the distribution of the proceeds of sheriff's sales, the sheriff will be required to bring into court certificates from the prothonotary and recorder of all unsatisfied judgments, liens and mortgages subsisting against the defendant in any writ whose property shall have been sold, for the use and guidance of the court. The office fees for such certificates shall be charged as part of the execution costs, and like other similar costs will be paid out of the fund for distribution. 23.

748. When real estate is sold by the sheriff, and he is not ruled to pay the money into court, the court will decree distribution of the fund as follows :

The sheriff shall report to the court a schedule of distribution according to the list of liens certified to him by the proper officer, which schedule and list of liens shall be attached to the writ. The schedule and list of liens shall be read in open court on Wednesday of the first week of the term ; and if the distribution so reported shall not be disputed or questioned, and exceptions filed thereto within ten days thereafter, it shall be final and conclusive and stand confirmed ; and an order shall then be entered by the clerk that the sheriff shall pay out in accordance with the distribution. If exceptions are filed within the time the court will proceed as in other cases. 16.

749. Upon the appropriation of the proceeds of the sale of real estate by the sheriff, the interest on judgments discharged by the sale shall be estimated to the return day of the writ upon which the sale shall have been made. But when the money shall have been brought into court, or the appropriation been delayed at the instance of the defendant, and any of his creditors shall be prejudiced thereby, then interest shall be estimated to the time when the appropriation is made. 9, 41.

750. Auditors shall be members of the bar, 1, 2, 3, 9, 17, 19, 20, 23, 26, 27, 28, 33, 35, 43, 47, 50, 51 (when they can be selected without objection, 41) who have been admitted to practice at least one year. 8.

751. If the auditor appointed refuses or is unable to act, the court, upon application, will fill the vacancy. 7.

752. Suggestions of the names of auditors, unless asked by the court, will not be considered. 3, 17, 50.

753. No agreement for the appointment of an auditor will be regarded unless an affidavit is filed therewith stating that those who sign the agreement by themselves or attorneys represent all the parties interested. 5, 17, 32, 50.

754. The court reserves the right to appoint at pleasure without regard to recommendation; and as a rule will not appoint one of two attorneys occupying the same office, whether partners or otherwise, nor in any case any one closely or remotely related or interested. 16.

755. Where the application for the appointment is on behalf of a non-resident, or where any one interested in the fund shall make an affidavit that the applicant has no just claim thereon, the court may require the applicant to give security for the costs of the audit, or strike off the appointment. 4.

756. Where exceptions are made to an account, the court will refer the matter to an auditor, if the exceptions are such as appear to require such reference, 19, 34, and unless the same shall be submitted to the auditor in time to advertise and make report to the next term, the exception shall be stricken off, and the account confirmed absolutely. 36.

757. All motions for the appointment of auditors (examiners, masters, commissioners, appraisers, etc., 1, 23,) shall be made in writing, 3 (signed by the attorney, 36, or party, 7) and show in whose behalf the motion is made, 9, and specifically the duties to be performed, 4, 16, 28, 35, 39) (shall be accompanied by an affidavit showing a special necessity for the same, 13) and filed. 1, 23.

758. In cases where it appears to be necessary, the court will appoint an auditor; but in cases where exceptions may be filed, no auditor shall be appointed until the time for so doing has elapsed, 3, 5, 14, 17, 50, and the account confirmed absolutely. 36.

759. In cases where it appears to be necessary, on proper application, the court will appoint an auditor or auditors (to make distribution of moneys in court, 6, 30, to collect, collate and report facts, and retax bills of costs, 37, 48) to examine the liens and claims, and report a distribution. 27.

760. All accounts which shall have been finally confirmed,

may be referred to an auditor or auditors to make distribution of the balance on the same, on motion of the accountant, or other distributee. 19.

761. In all cases where there is a dispute concerning the distribution of money arising upon execution and in court, the prothonotary shall give notice by publication during three successive weeks in one newspaper printed in the county, of the time fixed for distribution by the court, to every claimant to any part thereof, and the respective parties claiming such money, or any part thereof, shall be heard by their witnesses. The cost of publication to be paid out of the fund to be distributed. 7, 38.

762. All auditors are required to mail to each member of the bar a printed copy of the notice of audit, as printed in the newspapers. 24.

763. Written or printed notice of the time and place of hearing shall be posted by the auditor in the prothonotary's office, 6, (for six days, 25) (ten days, 21, 27, 29, 43) (two weeks, 12, 51) (fifteen days, 20) (three weeks, 23, 39) before the day fixed for the hearing, 7, 8, 12, 20, 21, 23, 25, 29, 38, 39, 43, 51, stating the estate or interest, and the purpose for which they may have been appointed; they shall also, whenever an adjournment has been determined upon, immediately post a like notice of such adjournment in the same office. 27.

764. The auditor shall give reasonable notice (not less than five days, 37) (not less than ten days, 5, 14, 17, 30, 36, 50) to all parties interested (or their attorneys, if resident in the county, of the time and place, when and where, he will attend to the duties of his appointment, 5, 6, 10, 14, 17, 18, 19, 30, 33, 36, 37, 48, 50, unless such notice is dispensed with by agreement of all parties interested, or by the court's order, 3) and by advertisements in the legal newspaper, the last of which shall be at least ten days before the day of hearing. 5.

765. In all cases where an auditor has been appointed to (marshal assets or, 47) distribute a fund, notice of the time and place of hearing (unless dispensed with by order of the court, 12) shall be given by the auditor (personally or, 40) (in the legal newspaper twice successively, 1) (three times, 2, 19) (four times, 43, 45) (and every other day five times in one newspaper, 1) (for three successive weeks in two newspapers of the county,

2, 7, 10, 16, 20, 21, 23, 24, 25, 26, 28, 35, 38, 39, 40, 46, 47, 48, 49) (for four successive weeks in two newspapers in the county, 4, 11, 13, 27, 33, 34, 44) (for three weeks in at least one newspaper in the county, 8, 9, 14, 15, 17, 18, 19, 29, 36, 37, 41) (for two weeks in one newspaper published at the county-seat, 12, 30, 43, 45, 51) (twice successively in two newspapers designated by the court, 32), requiring claimants to present their claims before the auditor or be debarred from coming in on the fund, 1, 2, 4, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30, 33, 34, 35, 36, 37, 38, 39, 43, 44, 45, 46, 48, 49, 51, and notice by postal card shall be sent to each member of the Bar Association at least ten days prior to the date of hearing. 47. This section shall apply to all cases where accounts are settled or money distributed by this court. 21.

766. Notice of the time and place of hearing may be waived in writing by all the parties in interest (or by an order of the court, 7, 26, 27, 28, 35, 41) except when a fund is to be distributed. 9, 39.

767. If the auditor's notice shall not appear within twenty days after the delivery to him of his commission (except where notice may be and has been duly waived) his appointment shall be ipso facto revoked. 9, 39. The time for the meeting shall be fixed at the earliest practicable day, and any unnecessary delay in concluding his duties will be charged to the auditor's account. 3.

768. Before proceeding to hear and examine the matters referred to them, they shall be sworn or affirmed to perform their duties with fidelity and impartiality. 6, 18, 22, 28, 30, 33, 35, 36, 37, 40, 47, 48. They shall have no power to act until they have been so sworn and have received their certificate of appointment. 17.

769. All references, audits and commissions of lunacy and habitual drunkards, shall be held in the grand jury room, and one dollar shall be taxed in each case for the benefit of the law library. 19.

770. They shall have power to administer oaths and affirmations, and examine any of the witnesses or parties in reference to the matters before them; to issue subpoenas for and attachments against defaulting witnesses, 17, 50, according to the usual practice either to the sheriff or any constable of the



proper county ; and also whenever it may be necessary, to apply to the court for orders to compel the production of any books, papers or other documents necessary to a just decision of the questions before them. 28, 33, 35, 36.

771. If the parties in interest, or any of them, fail to appear at the time and place appointed for the meeting, the auditor or auditors (referee or commissioner, 19), shall be at liberty to proceed ex parte, or in his or their discretion to adjourn the examination and proceeding to a further day, giving notice to the absent party or his attorney. 18, 19, 36.

772. At the time specified in the notice, the party or parties who ought to begin or proceed, shall do so, unless sufficient cause, is shown for a continuance, and no further postponement of the hearing shall be granted to the same party, except for such reasons and upon such proof as by the practice of the court will prevail there. Every adjournment shall be to a day certain, not more than thirty days distant. 39.

773. The auditor shall regulate all the proceedings before him (with the same discretion as govern the court in the trial of causes. 41.) (The examination shall be conducted by the counsel of the respective parties, viva voce, and the answers of the witness shall be reduced to writing by the auditor, expressed in the first person, and shall be divided into paragraphs, as nearly as may be, confined to a distinct portion of the subject, 39); the question shall also be written down if necessary to the understanding of the answer, or if either party requires it. It must always plainly appear who offered a witness or document, and what answers were given on cross-examination. 9, 39.

774. Auditors shall take sufficient (verbatim, 47) notes of the examinations, and testimony taken by them, and return the same, together with all depositions, documents, papers and other written evidence, including copies of all book entries and writings necessary to the decision of the case ; in a schedule annexed to or accompanying the report, 19, 36, 47, 50, and no other evidence will be received in support of exceptions to the report, except for reasons that would justify a new trial, and where the plain justice of the case requires that the report should be remanded for further hearing and report. 2, 36.

775. Auditors shall keep and return regular minutes of their proceedings, showing (the notices given, including the

notice of the completion of his report, what parties appeared, and when; what counsel appeared, when and for whom; the whole number of days he was necessarily engaged in the hearing before beginning the preparation of his report, and the time consumed in making up his report, 9) the different sessions (and the testimony taken at each, 3) the adjournments, if any; at whose instance made, and the causes for which they were granted; with such other facts as bear upon the question of his fee, or the taxation and imposition of costs, as will aid the court in determining the amount, in case of dispute, and direct how and by whom they should be paid. 5, 9, 14, 17, 21, 28, 30, 33, 35, 41, 47, 50.

776. The minutes kept by the auditor shall be plainly and conspicuously paged, and shall be returned with the report, but in a separate schedule. 3.

777. If objections be taken to the admission or rejection of evidence (or to the competency of a witness, 9, 39) before an auditor, he shall pass upon its admissibility, and the offer and the purpose of it, and the objection and the ground of it, as well as the decision of the auditor, shall be noted, in order that if exceptions be taken to the report on this ground the decision can be properly reviewed. 8, 12, 16, 27, 33, 36, 40, 41, 46, 49, 51. If the auditor sustains the objection he shall, nevertheless (unless the witness is clearly incompetent, or the evidence clearly inadmissible, or the questions impertinent or frivolous) reduce the evidence rejected by him to writing, enclosed by brackets, connected by red lines in the margin. 9, 39.

778. Every auditor shall decide and pass upon the competency of all witnesses produced for examination, and upon the admissibility of all evidence offered before him. If the witness shall be held incompetent, or any testimony be rejected, such fact, with the reasons for his opinion, shall be briefly stated by the auditor in his report. 10.

779. In all cases in which auditors shall hereafter be appointed to examine and report upon accounts, the appointment shall be stricken off, the exception dismissed, and the account confirmed, unless the exceptant shall exhibit the same to the auditor (within three months, or cause the contrary to be shown, 15) at the second term after such appointment. 7.

780. (After the first meeting, 16, 39) any party (before an

auditor, referee or commissioner, 19) may enter a rule as of course on his adversary to close his testimony within (four weeks, 9, 16, 39) (thirty days, 2, 19) after notice of such rule (and any testimony taken after thirty days notice of such rule shall not be read on the hearing of such cause either before the auditor, referee or commissioner, or in court at the hearing of the exceptions, 19). But it shall be in the discretion of the (auditor or, 2) court or a judge in chambers to enlarge the time on the application of the party against whom such rule may have been obtained, upon sufficient cause being shown. No such rule shall be entered against a party until he is bound to begin, and no party shall be obliged to begin until the adverse party, who ought to precede him in the production of testimony, has closed. 2, 9, 16, 19, 39.

781. It shall be the duty of the auditor (referee or commissioner, 19) to proceed with all reasonable diligence, and with the least practicable delay, 5, 10, 50 (and make report within 60 days after his appointment, 14, 30), and any party may apply to the court or a judge thereof for an order on the auditor (referee or commissioner, 19) (to speed the proceedings, and file his report or certify the reasons for the delay, 9, 18, 19, 36, 39) to vacate the appointment if no sufficient cause be shown for the delay. 33.

782. Upon complaint of any party interested, of misconduct or unreasonable delay on the part of any auditor, the court may either vacate his appointment (and appoint another in his stead, 28, 30, 35) or grant a rule on him to show cause why he should not proceed forthwith in the duties of his appointment, and in case of contempt punish him by fine or attachment. 6, 37, 48.

783. If no satisfactory cause for the delay is shown, the court will vacate the appointment of any auditor whose report is not filed within (sixty days, 5, 14, 32) (three months, 17) after his appointment, on motion for that purpose being made by any party in interest. 5, 14, 17, 32.

784. If a report shall not be made at the next succeeding term, the appointment shall be (deemed continued until otherwise ordered by the court, 21, 43) revoked, unless some special cause be shown for further continuance, 47, and at the cost of the defaulting party. 40.

785. In cases referred to an auditor any person desiring an issue framed (under the 87th section of the Act of Assembly, approved 16th June, 1836, 11, 25, 34, 44, 45, 48) shall reduce his request to writing, particularly stating therein any material facts that he disputes (setting forth the nature and character thereof, 1, 8, 13, 20, 23, 26, 28, 35, 39, 46, 49) under his oath or affirmation to the auditor (within (forty-eight hours, 1, 8, 14, 17, 23, 34) (three days, 9, 20, 39) (four days, 4, 25, 40, 47) (five days, 21, 26, 27, 28, 33, 35, 41, 44) after the necessity therefor appears, 12) (before the close of the audit, 3, 16) (within (two days, 5, 36) (four days, 11, 43, 45, 48) after written notice that the hearings before the auditor have been concluded). It shall be the duty of the auditor forthwith to make a report of the presentation of such written request, annexing such paper to his report, 1, 3, 4, 5, 8, 9, 11, 14, 16, 17, 20, 21, 23, 25, 34, 40, 43, 44, 45, 46, 47, 48, 49 (with the evidence, 12, 26, 27, 28, 33, 35, 39, 41) (and with his opinion as to whether such request should be granted, and, if so, directing the form in which the issue should be framed, 13). (No issue so applied for shall be granted except upon five days written notice to all parties who have appeared before the auditor, or their attorneys, of the time of the application. 11, 45.) The request for an issue shall be deemed waived, if no exceptions be filed by the party making the same, to the report of the auditor. 27, 36.

786. Parties desiring an issue must make their request in writing before a decree of distribution is made, or where an auditor has been appointed, within two days after the final hearing before him. 50.

787. If no auditor shall have been appointed, the request for an issue must be presented to the court before a decree of distribution is made. 27, 36.

788. When disputed questions of fact shall legitimately arise before an auditor, upon the petition and affidavit of any party interested, setting forth the specific facts in dispute, it shall be his duty to make a note thereof, and certify the same with said petition to the court for its action, and his final report shall be postponed until after the final action of the court. If no request be made for an issue by any party, he shall decide all such questions, giving briefly his reasons therefor, and return,

with his report, all the evidence presented before him relating thereto. 6, 18, 30, 37.

789. After the closing of the evidence has been noted and announced, any party may submit a finding of facts as he conceives they ought to be found upon the evidence, after the manner of a special verdict, for the purpose of aiding and guiding the auditor. 9, 16, 39.

790. The auditor's report shall contain :

*First.*—His commission and the public notice given by him of his appointment or the written waiver of notice.

*Second.*—A "finding of facts" in paragraphs consecutively numbered, after the manner of a special verdict, and as nearly as may be in chronological order, as well those undisputed as those disputed, without quotations from the evidence or discussions of it, or the auditor's reasons. If he deems it advisable to give his reasons for any finding of facts he shall do so in the argument in support of his report.

*Third.*—His "conclusions of law" in paragraphs consecutively numbered.

*Fourth.*—An account or schedule of distribution (which shall not be blended with the other parts of his report. 9.)

He shall file with his report proper an appendix containing :

*First.*—The exceptions to his report; and any "finding of facts" submitted by counsel.

*Second.*—The argument in support of his report.

*Third.*—The evidence. (The auditor shall not attach to the evidence, as an exhibit, any account or other document filed in the court, or belonging to its archives, nor any original document without the consent of the party entitled to the custody of it, but copies shall be made. 39.)

*Fourth.*—A minute of the proceedings before him (showing the notices given, including the notice of the completion of his report; the date and duration of each meeting; the adjournments and at whose instance; what parties appeared and when; what counsel appeared, when and for whom; the whole number of days he was necessarily engaged in the hearing before beginning the preparation of his report, and the time consumed in making up his report, with such other facts as bear upon the question of his fee, or the taxation and imposition of the costs. 39).

*Fifth.*—The bills of costs as taxed by him, in the manner

in which bills of costs are taxed in the prothonotary's office. 9, 16, 39.

791. When an auditor is appointed either to hear exceptions, or to report distribution, he shall report the substance of the facts proven before and found by him, and he shall also return and file the evidence produced before him, separate and detached from his report. 16.

792. The auditor shall in his report state separately and distinctly the facts found, the answers to any points submitted in writing by counsel, and his conclusions of law, 13, and shall return and file the evidence produced before him, separate and detached from his report. 10, 20.

793. Where facts are controverted the auditor shall report his findings thereon in concise form (after the manner of a special verdict, 3, 14, 21, 26, 27, 28, 33, 35, 41); he shall also state concisely the points of law raised before him and his opinion thereon, 3, 6, 14, 21, 30, 33, 34, 37, 40, 41. (The testimony, documentary or otherwise, shall be returned separately and filed with the report. 5, 8, 15, 19, 21, 26, 27, 28, 35, 36, 40, 41, 46, 48, 49, 51). (Padding shall be carefully avoided and the report shall be plainly paged, 3), showing the offers of testimony rejected, with a distinct statement of the ground of rejection. 14.

794. The auditor shall state in his report, briefly, the undisputed facts necessary to a proper understanding of the matter before him—the disputed facts, if any, and his conclusions from the testimony, referring by name and page to that on which said conclusions are based—the points of law disputed, with his decisions and reasons therefor, 17, 50, and the authorities on which he relies. 47.

795. When an account or schedule of distribution is necessary, it shall not be blended with other parts of the report, 34, but stated in such a form as to be conveniently recorded. 5, 6, 10, 14, 17, 19, 21, 26, 27, 28, 30, 33, 35, 36, 37, 40, 41, 43, 47, 48, 50.

796. Any auditor who shall be appointed to distribute a fund arising from a sheriff's or assignee's sale, or an extension of real estate, shall procure from the prothonotary a certified list of the judgments appearing to be liens against the lands sold or extended, in the order in which they stand upon the

judgment docket, and the prothonotary shall mark his fees for the same upon such list, and shall be paid out of the fund for distribution, and this list shall be returned by the auditor and filed with his report: Provided, that upon the agreement of the parties interested in the question of appropriation, the procuring such certified list may be dispensed with. 11, 44, 45.

797. It shall be the duty of the auditor to make out and return with his report, a statement of the liens or other claims on the fund examined and the distribution made, which statement, with the decree of the court, when confirmed or modified by the court, shall be recorded in the proper docket by the prothonotary, and the whole report filed with a reference to the place of filing entered upon the record of the same. 6, 37, 48.

798. The reports of auditors and masters shall be so arranged that they may be recorded according to the Act of Assembly. 5.

799. The auditor shall state in his report how and to whom notice was given, 3, 18, which, if according to rule or the order of the court, shall be sufficient evidence of notice being given. 28, 33, 35.

800. The auditor shall, in his report, submit the form of an order or decree in accordance with his opinion, and when no exceptions are filed, the prothonotary shall date the same and sign it "By the Court," adding his own signature. 28, 33, 35.

801. It shall be the duty of auditors (on the request of any party interested, 32), to annex to their reports the testimony taken before them, and a statement or copy of the documentary evidence (separately, 12). If the circumstances shall appear to require it, the court may recommit the report for the purpose of taking further testimony, and when such further testimony shall be taken the auditor shall report upon it. 32.

802. It shall be the duty of the auditor, in addition to the distribution of the fund or other duty referred to him, to report to the court whether the application for his appointment was well founded, and if not, to make suitable recommendation in regard to the costs of the audit. 4.

803. The auditor shall state in his certificate to his report that he is not concerned as counsel for, nor related to any party to the matter before him, nor interested in the event of it, unless the same is dispensed with by leave of the court. 18.

804. All reports of auditors shall be filed in open court, unless it is otherwise directed by the court, or agreed upon between all the parties in interest. 6, 7, 18, 27, 33, 38, 41.

805. The regular days for filing reports of auditors shall be the first day of each term, and the same shall be confirmed absolutely on the following Monday, (third day of the next week, 29) unless exception be sooner filed: Provided, that if notice be given of the time of presentation they may be filed at any time in open court, and exceptions must then be filed within four days (ten days, 29) thereafter, or the report will be confirmed absolutely. 4, 29.

806. All reports of auditors, and of commissioners and examiners appointed to take evidence and find the facts, unless otherwise ordered, shall be filed in the prothonotary's office at least ten days before the commencement of the term at which said reports are returnable. If no exceptions are filed to the reports of auditors on or before the first day of the term, the same will be confirmed. And in case of reports of commissioners or examiners to take testimony and find the facts, if no exceptions are filed on or before the first day of the term, the said reports shall be conclusive on the parties. This rule will not be relaxed except for very special reasons. 42.

807. All reports of auditors shall be filed (on the first day of the next argument court, 46, 49) (on a motion day, 24, 28, 35) (the first day (on Saturday, 2) of the next regular term) unless the court specially extend the time, and shall be presented and filed in open court, 2, 12, 20, 24, 28, 35, 36, 37, 40, 46, 48, 49, 51 (no report shall be filed by title. 2) (Public notice of the filing shall be given by proclamation. 26, 28, 34). If no exceptions have been filed with the auditor the report shall be confirmed absolutely. 10, 12, 16, 18.

808. All reports of auditors shall be made to the court in session at its next meeting after the completion thereof, of which five days notice shall be given by the auditor to the parties having attended the audit. 6, 48.

809. Notice of the presentation of auditor's reports to the court for confirmation nisi, shall be published in the legal newspaper three days prior to said presentation. 19.

810. It shall be the duty of the prothonotary to keep posted in some conspicuous place in his office (in the court room, 26) a



list of auditors' reports, giving the name of the estate, and the time of filing and confirmation nisi, and of exceptions; and as new reports are filed at once add the same to such list. 11, 43. The court will make the proper decree in relation thereto, unless exceptions be filed within four days after notice of the same placed on the list as aforesaid. 26, 34, 44.

811. The prothonotary shall prepare a list of the auditor's reports filed at each term, and post the same conspicuously within the bar, on the first day of the term; adding thereto reports subsequently filed. 22.

812. No exception shall be received to the report of any auditor (or master, or referee in chancery, 32) unless the party excepting has filed the same with the auditor (master or referee, 32) by whom the report has been made, whose duty it shall be, on such exceptions being filed, to reexamine the subject and amend his report, if, in his opinion, such exceptions are, in whole or in part, well founded, 1, 6, 12, 14, 15, 17, 18, 20, 21, 23, 30, 32, 36, 37, 39, 50, and file it in open court after re-writing it, if amended. 9.

813. In order to give all parties in interest an opportunity of entering exceptions, no auditor (master or referee, 32) shall file his report until ten days (five days, 3, 8, 12, 21, 30, 37, 46, 48, 49) (fourteen days, 39) after he has notified the parties of his intention so to do, on a day designated, and giving them an opportunity of having access to such report, 1, 3, 5, 8, 9, 10, 12, 14, 15, 16, 17, 18, 20, 23, 30, 36, 37, 45, 46, 48, 49, 50, at the prothonotary's office during that time. 39. (If the auditor amends his report he shall give a like notice of the time of filing the amended report. 45). No exception may be filed thereafter without the leave of the court for cause shown. 8, 9, 12, 14, 16, 21.

814. All auditors hereafter appointed shall, before presenting their reports to the court, give notice (five days, 43) (ten days, 13) to all counsel appearing before them, and interested in the report, of the time when the report will be presented for confirmation. 8, 11, 13, 21, 43, 51. (This provision shall be inserted in all orders issued to auditors, and the auditor's certificate of such notice shall appear in the report. 2). Such notice shall be given by mail to parties not appearing and not residing at the county seat. 13, 36.

815. Exceptions to auditors' reports (unless apparent on the face of the record, 43) shall be accompanied by an affidavit that the same are not filed for the purpose of delay, but because it is believed they raise questions requiring the action and decision of the court in order to prevent injustice. 11, 13, 26, 43, 45.

816. If the grounds of the exceptions do not appear clearly in the report or record, or in the account stated by the auditor, the facts alleged in the exceptions must be verified by affidavit. 7, 38.

817. An exception must point specifically to the very error of fact or law complained of, and state the grounds of objection. 27, 28, 36, 40. General and vague exceptions will not be noticed. 33. When the exception is to the auditor's finding of a fact, or omission to find a fact, it shall state how he should have found. 9, 23, 39.

818. The auditor in passing upon exceptions shall set forth each exception and his answer thereto specifically. 16.

819. All reports of auditors, referees and masters, made during vacation, and to which exceptions have been filed, may be filed in the prothonotary's office, and shall be at once placed on the argument list. 32.

820. When exceptions are filed to the report, it shall be the duty of counsel to set forth the exceptions, and the ruling of the auditor thereon fully, and not simply refer to it by number ; for example : The auditor erred in overruling exception No. 1, which exception reads as follows, (here insert it) and upon which the auditor ruled as follows (here insert). In like manner when an auditor is requested to make certain rulings or findings, and exceptions are filed to his action, the attorney must set forth the point or fact, and the ruling thereon fully in his exception. Exceptions filed in disregard of this rule will be treated as a nullity. 16.

821. If the exceptions filed cover only part of the fund to be distributed, the court may, in its own discretion, confirm the report as to the unexcepted part, and direct payment thereof. 14, 21.

822. The court may order distribution of any portion of the fund in court, not included in any controversy as to the right to it, before or during the pendency of the audit, and order such portions as are embraced therein to be deposited or

invested during such controversy, 18, 30, 37, 48, of which a record shall be carefully kept. 6.

823. On the hearing of the question of confirming or setting aside any auditor's (master's or referee's, 32) report, the party excepting thereto shall be confined to the exceptions made by him before the auditor, 20, 45, 46, 49 (master or referee, 32) reserving to the court, however, the power of recommitting the report should justice require it. 1, 5, 9, 14, 15, 23, 32, 36, 39.

824. If the court think that a question of fact (raised by the exceptions) ought to be tried by a jury they may order an issue or issues for that purpose. In every such issue the precise facts in dispute shall be distinctly and severally stated, so that the verdict may be clearly rendered. 27.

825. When no exceptions are filed with the auditor, referee or master, he shall present his report at the next session of the court for final confirmation. 9, 32,

826. On the first Thursday of the term, at the opening of the afternoon session, the list shall be called and the reports confirmed absolutely, unless exceptions be filed, or the time for filing the same be enlarged; and if no exceptions be filed within the time enlarged, confirmation absolute shall be of course. If a report be filed after the list has been called, notice thereof must be given to all the parties who appeared before the auditor, or their attorneys; and thereupon a time shall be fixed by the court, and notice thereof posted within the bar, at which confirmation absolute shall be of course unless exceptions be previously filed 22.

827. If no exception be filed the report shall be confirmed nisi on filing, and absolutely (four days, 11, 13, 20, 25, 26, 34, 40, 44, 45, 46, 47, 49) (five days, 14, 36) (one week, 1, 23) (eight days, 8, 41) (ten days, 2, 6, 7, 17, 21, 27, 28, 30, 33, 35, 37, 38, 39, 48, 51) (fifteen days, 3) (twenty days, 43) (three weeks, 19) thereafter, 1, 2, 8, 11, 13, 14, 17, 19, 20, 23, 24, 25, 26, 28, 30, 35, 36, 37, 39, 40, 43, 44, 45, 46, 47, 48, 49, 51, and the prothonotary shall on request make a minute of the absolute confirmation, 3, 47, and enter the proper decree as a matter of course. 33.

828. Upon the filing of an auditor's report, confirmation nisi shall be of course. 22.

829. Exceptions to the report of the auditor must be

renewed within (four days, 46, 49) (ten days, 17, 50) after the confirmation nisi. 46, 49. Renewal of exceptions shall be by stating the number of the exception renewed, and adding "renewed," signed by the party or his attorney. 17, 50.

830. If exceptions shall have been filed before the auditor, the report shall be confirmed nisi on presentation; and unless exceptions be filed to the ruling of the auditor on the exceptions (or the exceptions filed before the auditor be renewed in court) within ten days, the report shall be confirmed absolutely, and shall be so marked by the prothonotary. 18.

831. No report will be confirmed absolutely upon application of the auditor making the same. 13.

832. If exceptions be filed (renewed, 10, 14, 16, 17, 18, 50), the case shall be placed upon the argument list, 4, 6, 8, 10, 12, 14, 16, 17, 18, 30, 34, 39, 44, 46, 49, 50 (for disposition at the same term, 13, 24), (and have precedence over all other cases, 30, 48) provided it has been filed fifteen days prior to said court. 9.

833. Whenever a distribution of a fund is contained in or accompanies a report, an order of distribution accordingly shall be considered as contained in the confirmation as fully as if the distribution were set forth and specified in the order itself, and the order may be entered by the prothonotary, and shall become effective when the confirmation becomes absolute. 40.

834. Where, in justice to all parties in interest, the cost of an audit can be dispensed with, the court will decree distribution; but in such case the moneys raised by the sale shall not be paid over until the expiration of twenty days from the date of the decree, in order that any party aggrieved may have opportunity to seek a review of the determination of the court. 23.

835. No actual payment shall be made under any decree of distribution, until twenty-one days after the date of such decree. 32.

836. (Where disputed questions of law or fact have arisen, 10) if no appeal be taken within twenty days (twenty-one days, 21) after final confirmation of a report, or the entry of a decree distributing money, the money shall be paid over according to the report or decree, without further order, 5, 8, 11, 12, 14, 17, 18, 20, 21, 26, 27, 28, 33, 35, 36, 37, 40, 41, 43, 45, 46, 49, 50, 51,

(unless it be otherwise directed. 3). In other cases the money shall be paid out at once on final confirmation of a report or decree of distribution. 10.

837. It shall be the duty of the officer or party distributing or paying out money in any manner connected with proceedings in court, in all cases, to have a receipt for each item paid out, entered on the appearance docket (or execution docket, 50) in the prothonotary's office, or on the face of the proper record of the lien or claim in whatever office it exists. 5, 14.

838. In cases where for special reasons shown, or on application of the officer, the court has made an order or decree of distribution of money not paid into court, but remaining in the hands of the officer, he shall, on payment under the order or decree, cause the payments made by him to be receipted for on the appearance or execution docket in the prothonotary's office. 18, 27.

839. The officer paying out money on a decree of distribution shall cause the payments made by him to be receipted for on the appearance or execution docket, 17 (to be receipted on both the distribution and lien docket, 6, 48) if not paid into court, but remaining in the hands of the officer. 36.

840. No decree of distribution shall be suspended by an appeal without the entry of security by the appellant, to be approved by the court or judge thereof, to prosecute such appeal with effect. 8, 12, 20, 46, 49. 51.

841. All auditors' reports shall, when confirmed nisi, be immediately recorded by the prothonotary in the proper docket, and the cost of such recording shall be paid out of the fund. 11, 45.

842. As soon as the time allowed for exceptions has elapsed without any being filed, or as soon as the report is finally confirmed after the exceptions have been disposed of, the prothonotary shall record the report of distribution, agreeably to the Act of Assembly, omitting the evidence, and the fees of recording shall be allowed by the auditor in his report. 27, 36.

843. The auditor shall submit the question of the amount of his compensation to the counsel for the parties who may be liable for the costs, who may designate the sum which they think ought to be paid for his services. If this is done and the amount is not satisfactory to the auditor, he shall name the sum he deems him-

self entitled to ; and if excepted to, he may make an interlocutory report thereof to the court or the judge at chambers, with a statement or argument in support of his charge, and have his fee settled on forty-eight hours notice to the exceptant's counsel. 16. In cases where applicable the compensation shall be regulated by Act of 4th June, 1879. 39.

844. The compensation of auditors (and commissioners, 9) shall be limited to the allowance fixed by the Act of 4th June, 1879. (P. L. 84). 9, 16, 47.

845. Examiners, commissioners, and other referees shall be governed also by the foregoing rules. 18.

### DIVORCE

846. Libels shall be framed in general analogy to bills in equity by setting out the matters relied on distinctly, in separate paragraphs, consecutively numbered, and containing as follows :

#### Paragraph 1.

(a) The names of the parties, and the time and place of the marriage, 1, and by whom solemnized. 16, 39.

(b) The citizenship and domicile of the parties respectively at the time of marriage, and since, including a positive averment that the libellant has been a citizen and resident of the State for one whole year previous to the filing of the libel. 1, 16, 39.

(c) Their present place of actual residence, with details of street, number, etc., 1, 11, 14, 20, 23 ; and of the domicile at the time of the injury. 16, 39.

847. In case the present residence of the respondent be unknown to the libellant, then an explicit averment of that fact shall be made, together with a statement of the respondent's last known residence and the time at which he or she was last known to be there. 1, 11, 14, 16, 20, 23, 39.

848. If the marriage shall not have been contracted and the present actual residence of both parties shall not also be within this county, then a full statement shall be made of the time, place and circumstances under which the parties or either of them became domiciled within the jurisdiction of the court. 1, 14, 20, 23.

849. Subsequent paragraphs shall contain a succinct statement of the time, place and circumstances of the alleged cause of divorce. Where more than one cause of divorce is alleged, each shall be set out in a separate paragraph. 1, 14, 16, 20, 23, 39.

850. The final paragraph shall contain a prayer for divorce, a *vinculo matrimonii* or a *mensa et thoro* as the case may be. 1, 14, 16, 20, 23, 39.

851. The libel shall contain, in addition to the matters now required to be set forth therein, a statement that the libellant resides in this county, 36, and has resided therein at least one whole year immediately preceding the presentation of his or her petition, unless at the time of the presentation of the libel the respondent resides in this county, which fact shall be averred in the libel. 18.

852. In proceedings for divorce the libel shall contain a full and clear statement of the following matters:

(a) The present residence of the libellant, and how long he or she has resided there, and the immediate prior residence.

(b) The time and place of marriage; and the name and residence of the officiating magistrate or clergyman; or if no such magistrate or clergyman, then what marriage ceremony was observed. If the name of the magistrate or clergyman is not remembered, then the name of some person or persons (if any) present at the marriage.

(c) The residence of the libellant and respondent at the time of marriage.

(d) The present residence of the respondent, and how long he or she has resided there; or if the present residence is not known, then the last known residence, and also whether the libellant has any information or belief as to the respondent's present residence, and if so the name and place of such residence.

(e) The cause or causes of divorce, with time and place of occurrence, and where the parties were domiciled at the time. 43.

853. The affidavit to the libel shall be in the form now used, as required by the Act of Assembly, and shall be made before a magistrate of this county, 1, 23, or one of the judges thereof. 20.

854. A rule on the respondent to appear and answer within

thirty days after the return day of the subpoena shall be entered of course by the prothonotary, at the time of filing the libel. 1, 20.

855. All subpoenas in divorce shall be issued thirty days before the return day, and be made returnable on the general return day of the term. 5, 14, 46, 49.

856. A copy of the libel shall be served upon the respondent with the subpoena. 23. The said copy shall have endorsed upon it a notice to the respondent in the following form :

To A. B.

the within named respondent,

You are hereby notified and required, within thirty days from Monday, the                      day of                      next, to cause an appearance to be entered for you in the Court of Common Pleas, No.                      , of the County of                      , and an answer to be filed to the libel for divorce, of which the within is a copy.

NOTE.—You are hereby warned that if you fail to enter an appearance and file an answer as above notified and required, the cause will proceed without you, and you will be liable to have a decree of divorce entered against you in your absence.

C. D.,

Attorney for Libellant. 1, 20.

857. The subpoena and copy of libel shall be served upon respondents who have a known residence within the State at the time of service, in the manner in which bills in equity are served. 23.

858. The subpoena, copy of libel and notice to appear and answer, shall be served by the sheriff upon respondents who are within the county at the time of the service. 1, 14, 16, 20, 39.

859. Where the respondent is not within the county, but is within the State, the sheriff shall deputize the sheriff of the county where the respondent may be found to serve the subpoena, 16, 39, with a copy of the libel and notice to appear and answer; and in such case the sheriff shall make return that the respondent could not be found within the county, and he did therefore deputize the sheriff of such other county to make the service, and shall attach to his own return the affidavit of the officer making the service. 1, 14, 20.



860. In all cases, the officer making the service shall make an affidavit, stating the time, place and manner of serving the subpoena, copy of libel, 23, and notice to appear and answer, and also that the person so served by him is the respondent named in the writ, and his means of knowing such fact, 1, 16, 20, and a similar return shall be made by the officer or person serving a rule or notice to take depositions. 14.

861. When the subpoena is returned "served" it shall be accompanied by an affidavit of the officer or person serving the same, setting forth particularly how such service was made and the time when the writ was served, 2, 5, 7, 8, 15, 17, 32, 37, 38, 39, 46, 47, 48, 49, and the return so made shall be regarded as "due proof" of the facts therein stated. 9, 12, 18, 19, 21, 26, 27, 28, 33, 35, 36, 41, 50, 51.

862. When the subpoena is returned non est inventus, it shall be accompanied by the affidavit of the (libellant, 38) sheriff or officer in whose hands the writ was placed for service, that he has made diligent inquiry for the respondent, and that he or she could not be found within the county. 5, 14, 17, 38, 46, 47, 49, or State. 20.

863. In all cases of the personal service of a subpoena in divorce the return of service thereof shall set forth particularly the place where it was made. 11, 13.

864. Where the first subpoena is returned that the respondent cannot be found in this county or State, (accompanied with the affidavit of the libellant that he or she, after diligent search and inquiry, has been unable to ascertain the residence of the respondent, 23) which return shall be made to the first day of the next term, which shall commence not less than thirty days after the filing of the libel, an alias subpoena may be issued, returnable to the next or any subsequent regular term. If the second subpoena is returned that the respondent cannot be found in this county or State, the prothonotary shall issue, on the application of the libellant, an order on the sheriff, directing him to publish, once a week for four full weeks successively, in (the legal newspaper, 1, 2) and two daily newspapers (one, 2, 8) of large circulation, notice to the respondent, 8, 15, 32, (in the county for four full weeks, 7) in the following form :

867. When publication is made as provided in these rules, it shall be the duty of the officer making the same to address a marked copy of the paper containing such publication, to the last known post office address of the party who is to be affected by such notice, 14 ; and the officer shall make return under oath that this rule has been complied with. But if no such post

office address is known, or can be found after diligent inquiry, he shall so return under oath. 16, 46, 49.

868. Whenever the nature and circumstances of any case may require, the court will make such special orders, as to notice and publication, as to right and justice may belong. 46, 49.

869. In all cases brought under the provisions of the Act of 20th June, 1893, P. L. 471, if personal service of the subpoena cannot be made upon the husband by reason of his non-residence within the Commonwealth, proof must also be made of notice to him personally or by registered letter to his last known place of residence, 20, when, if the respondent does not appear, the petitioner may proceed ex parte. 17.

870. The counsel for the respondent shall enter his appearance by filing a written order therefor, accompanied by a letter of attorney from the respondent, which shall be duly acknowledged before the prothonotary, or a judge, justice of the peace, or magistrate of the county, district or State in which the respondent may reside, or if the respondent be without the United States, then before an officer authorized by the laws of this State to take acknowledgments of deeds, etc., in a foreign country. The said letter shall be attached by the master to his report. 1, 20.

871. Where service has been duly made either personally or by publication, and the respondent does not appear, or having appeared does not answer, within (the first four days of the term, 36) (twenty days, 2, 5, 17, 30, 37, 46, 48, 49) (thirty days, 1, 20, 23, 39) after the return day thereof, the libellant may proceed ex parte, 1, 2, 5, 6, 7, 16, 17, 20, 21, 23, 30, 36, 37, 39, 46, 48, 49, upon an order of the court obtained for that purpose. 4.

872. If the respondent appears (for which ten days after return day is allowed, 8) the libellant may enter a rule on the respondent to answer within (fifteen days, 15,) (twenty days, 4, 5, 10, 21, 22, 40, 46, 49) (thirty days, 7, 8, 16, 38, 39) after service of said rule, 16, (which rule shall be served by the sheriff, and proved in the same way as is directed in relation to a subpoena, unless such rule is served on the respondent's attorney of record. 7, 15, 38.) In default of answering, after the service of such rule (demanding a jury trial, 46, 49) the libellant may proceed ex parte. 4, 5, 7, 8, 10, 15, 21, 32, 38, 39, 40, 46, 49.

873. The respondent may, at any time within thirty days after the return day, or afterwards with leave of the court, upon cause shown for the delay, demur or answer to the libel, or may demur to part and answer to the rest. 1, 20, 23.

874. When a subpoena or alias subpoena has been duly served fifteen days before the return day, or publication duly made, the defendant shall answer the libel or bill within the first four days of the term; in default whereof the court may, on ex parte affidavits, exhibits, or other legal proof, or by appointment of an examiner as hereinafter provided for, make such decree as to them shall seem just and reasonable. 14. If the service when made shall not be fifteen days before the first day of the term to which the writ is returnable, the defendant shall be allowed four days after the expiration of fifteen days from the time of service, to file his or her answer, and if none be filed, the court will proceed as before provided. 27.

875. The answer shall be responsive to the libel, and shall be arranged in paragraphs corresponding as to subject-matters as nearly as may be with the paragraphs of the libel; but other new matters relied upon by the respondent may be set forth in subsequent paragraphs. 1, 14, 20, 23.

876. Where the answer shall not be confined to mere denial of the facts averred in the libel, but shall contain new matters, the libellant may file a replication to such new matters only. 14. No further pleadings shall be made by either party without special leave of the court. 1, 20.

877. The respondent may enter a rule for a bill of particulars under the Act of 25th May, 1878, of course, at any time before filing his or her answer, but after answer filed no such rule shall be entered unless specially allowed by the court, 1, 20, 23, and the libellant may do likewise as to any new matter set up in the replication. 14.

878. Should the pleadings raise any issue of fact, relevant and material to the relief sought, which either party may desire to have tried by a jury, an issue shall be framed by the party desiring such trial, and presented to the court for approval. The issue shall not be a feigned issue, but an issue directly framed on the facts alleged and denied in the pleadings. Such issue and trial shall be of right at any time before the taking of testimony upon the merits of the case shall have actually com-

menced, 16, but thereafter such trial by jury shall be allowed only in the discretion of the court upon motion and cause shown. 1, 20, 23, 39.

879. When an answer is filed it shall state whether the respondent demands an issue to be tried by a jury, and shall specify the facts in the petition which are disputed or avoided, otherwise a jury trial will be taken to be waived by the respondent. 3, 6, 14, 18, 26, 30, 36, 37, 47, 48. (All material averments in the libel (if an issue is demanded, 8, 9, 10, 12, 16, 27, 28, 35, 40, 46, 49, 50, 51,) shall be taken as admitted unless specially denied in the answer. 5, 8, 9, 10, 12, 14, 16, 17, 19, 21, 27, 28, 33, 35, 40, 41, 46, 49, 51). The libellant shall thereupon file a replication, and the cause shall be ready for the trial list. 47.

880. When an answer is filed setting up facts in avoidance of the libel, the petitioner shall, on or before the next term, deny them, or they will be taken as admitted. If the respondent shall not in the answer have demanded an issue to a jury, and the reply to the answer shall not demand an issue, such issue shall be taken as waived by all parties. 17.

881. An application for an issue must be made before the case is called for argument, and shall set forth specifically the matter of fact on which the issue is to be formed. 22.

882. If an issue is demanded, the case shall be placed immediately on the issue docket by the prothonotary. 14, 17, 46, 49

883. Amendments of the pleadings may be allowed in the discretion of the court; but no amendment of the libel alleging a cause of divorce of a different nature shall be allowed. 1, 11, 20, 23.

884. If after answer filed the libellant except thereto, the respondent may within ten days thereafter amend or file another answer, and so as often as exceptions be made. If the respondent does not amend, or if he put in a new answer, the petitioner may have the sufficiency of the answer determined by the court. If no exception be filed, the libellant shall reply to the answer in writing. Either party shall be entitled to a rule upon the other to reply, rejoin, etc., on fourteen days notice. 36.

885. After the subpoena has been served, either personally or by publication, and return thereof has been duly made, if

neither party asks for a trial by jury, the evidence will be heard by one of the judges in open court, unless in his opinion the hearing ought to be held in chambers. No examiner will hereafter be appointed.

[Stated sessions of the court will be held for such hearings.]

Either party, in person or by attorney, at least three weeks before either of the days fixed for such hearings, may notify the prothonotary in writing that he wishes to have his case heard at the approaching session ; or he may enter the case for hearing in the watch book kept in the prothonotary's office ; and at least three weeks before the said day the prothonotary shall make out a list of all cases so noted for hearing, giving them priority according to their number and term, and shall post the list in some conspicuous place in his office. In addition to the notice given by such posting, at least ten days notice of the time and place of the hearing shall be given to the opposite party or to his or her attorney of record, unless there be no attorney of record, and the opposite party cannot be found within the State, in which event notice shall be given by publishing the time and place of the hearing in one newspaper in the county once a week for two successive weeks, the first of which publications shall be at least ten days before the time of the hearing, and by mailing postpaid a marked copy of each issue of the newspaper containing such notice to the last known post office address of such opposite party. If this notice is given by publication, the court will not begin the hearing of the evidence until satisfactory proof is made that the opposite party could not be found within the State. 12.

886. At the hearing, all witnesses residing within the State, within 120 miles of the county seat, unless unable to attend for some legally sufficient reason, must appear and give their testimony orally. Notes thereof will be taken by the official stenographer, and transcribed and filed of record, unless the court directs otherwise. The testimony of witnesses residing out of the State, or beyond the distance above specified, or of those who may be unable to attend for some legally sufficient reason, may be taken by deposition under a rule or commission as in other cases, except that a special order as to the manner of giving notice of the time and place of executing the rule or the

commission must be applied for, whenever there is no attorney of record, and the opposite party cannot be found within the State.

After the evidence has been offered, if either party wishes to argue orally thereon, he will be heard at the next argument court, as if he had made formal motion for or against a decree; but if neither party wishes to make an oral argument, briefs upon the law and the facts, or upon either, may be handed to the court within ten days after the hearing of the evidence has been finished. 12.

887. The proof in all proceedings in divorce in which a jury trial is not demanded, shall be taken before one of the judges of the court at chambers. Witnesses residing within the county, or in the State within forty miles of the county seat, shall, if able to attend, appear and give their testimony orally, notes of which shall be taken by the court stenographer, and after having been duly transcribed, shall be filed of record in the case. 45.

888. On the first Monday of February, annually, the court shall appoint a standing master and examiner, in divorce cases, who shall take, subscribe to and file with the record of his appointment, an oath that he will discharge the duties of his office with fidelity and to the best of his ability; who shall act until his successor shall have been appointed and duly qualified, and to whom shall be referred all matters in divorce, involving inquiry into facts or the taking of testimony, except where an issue shall have been formed; by and before whom such inquiry shall be made and testimony taken, and upon which he shall report to the court the facts found by him, together with the conclusions of law arising therefrom, and such recommendation or decree as the case shall warrant: Provided, that for cause shown the court may appoint a master and examiner pro hac vice. Cases will be referred to the master to be heard ex parte, on motion of the libellant, at any time after the return day, if the subpoena has been served at least fifteen days before the return day, and no appearance has been entered. 13.

889. When a case is ready to be proceeded with, either upon an answer not demanding a trial by jury, or ex parte, an examiner (master, 1, 15, 16, 20, 39) (commissioner, 22, 23, 24, 27) shall be appointed by the court, upon the motion of either

party, 21, 32 (or the parties may agree upon a commissioner, 47), to take the depositions of witnesses to prove the truth of the facts set forth in the libel and answer, 6, 7, 8, 9, 10, 11, 15, 18, 19, 22, 23, 24, 26, 27, 28, 30, 35, 36, 40, 41, 43, 46, 49, 51, (and to report his findings of fact, with his opinion. 16, 39). The motion shall be made in writing, upon a regular motion day of the court. 1, 20. But the court may require the testimony to be taken in open court, and decline to appoint an examiner. 47.

890. Examiners in divorce must be members of the bar. 2, 3, 27, 46, 49.

891. No suggestion or agreement from parties or counsel as to the person to be appointed master (or examiner) will be received under any circumstances. 1, 3, 16, 20, 39.

892. When a commissioner is appointed, he shall give notice, and be sworn, as is provided for auditors. 32.

893. (If the respondent has appeared, 16) the master (or examiner) shall give ten days (fourteen days, 16, 39) written notice to the counsel of both parties of the time and place of taking testimony, 2, 11, 39 (if resident in the county. 24). If there shall be no appearance for the respondent, the notice shall be given to him or her personally, if possible, or if not, then by leaving it at his place of residence, or by registered letter to the address where the master (or examiner) shall have reason to believe it will be most likely to reach him or her, 1, 11, 20, and by filing for twenty days in the prothonotary's office. 18.

894. It shall be the duty of the master and examiner to notify the respondent of the proceeding, if his or her residence or address can be obtained. 15, 19, 30, 43.

895. The examiner shall give the respondent ten days (five days, 26, 27, 28, 36, 41) (twenty days, 8) notice of the time and place of taking testimony, personally if the respondent can be found, 8, 17, 19, 26, 27, 28, 35, 36 (together with a copy of the interrogatories. 23). In other cases notice will not be required. 41.

896. If the respondent cannot be found, due proof that notice of the time and place of meeting has been posted in a conspicuous place in the prothonotary's office, for (five days, 26, 27, 28, 35) (ten days, 2, 8, 11, 19, 23) shall be sufficient. 2, 8, 11, 19, 23, 26, 27, 28, 35.

897. If the respondent cannot be found in the county, and is not personally served, notice shall be given of the time and



place where the examiner will enter upon the discharge of his duties, by (two, 37) (three, 16, 17, 36, 39, 43, 46, 49) (four weeks notice in two, 24) successive weekly publications in a newspaper of general circulation published at the county seat, 36, 39, 43, 46, 49, (the last of which shall be at least ten days before the time appointed, 17) and the examiner must certify that the same has been done, and attach a copy of the notice to his report. 37.

898. No testimony shall be taken by the examiner, except upon the production before him of proof of service of notice of the time and place of taking of such testimony upon the respondent; or upon the production of an order of the court directing the case to proceed ex parte. 4.

899. The examiner shall not sit as such until satisfied that at least five days (ten days, 10), notice of the time and place of sitting has been given to the respondent, (unless such respondent cannot be found within the jurisdiction, when notice conspicuously posted for five days (ten days, 10) (twenty days, 18), in the prothonotary's office shall be deemed sufficient, 10, 14, 21, 40, 51) (who has been served with the writ, if he can be found. If the respondent cannot be found, the hearing may proceed without notice to him. 9). The examiner must certify to the fact and kind of notice; otherwise the court will not act on the depositions. 51.

900. When advertisement is made, a copy of the newspaper containing the publication, shall be sent to the respondent's address, if known, a reasonable time before the taking of depositions. 16, 24.

901. When a case is ready for hearing, either upon answer not demanding a trial by jury, or ex parte, the libellant shall file his or her interrogatories to be propounded to witnesses before the examiner (commissioner, 23) to be appointed by the court. 2, 7, 23, 32, 38.

902. The respondent shall be at liberty to file cross-interrogatories to the libellant's, at any time before the expiration of the ten days notice to the respondent. 2, 7, 23, 32, 38.

903. If the respondent desires to examine witnesses, he or she may file interrogatories in the same manner, giving the same notice, and the libellant may, in like manner, file cross-interrogatories. 2, 7, 23, 32, 38.

904. Where an appearance is entered, a copy of the interrogatories shall be served on the respondent, at least ten days before the examination of libellant's witnesses is to take place. 32.

905. In all cases of divorce for alleged desertion, in which there is no appearance by the respondent, or the proceedings are ex parte, it shall be the duty of the prothonotary to attach to the rule or commission for taking depositions, the following cross-interrogatories, to be answered by the witnesses:

1st. State, if you know, the cause or alleged cause of the separation of the parties and the desertion of the respondent, and how you learned the same?

2nd. Do you know of your own knowledge, or by report, where the respondent now resides? If yea, state the latest knowledge on the subject.

And it shall be competent for the court, at any stage of the cause, to make any further order respecting notice to the respondent, of the proceedings in court, that it may deem just and proper. 6, 37, 48.

906. In all cases of divorce, where the proceedings are ex parte, it shall be the duty of the prothonotary to attach to the commission to the examiner, the following cross-interrogatories, which shall be propounded to each witness—the cause of complaint set forth in the libel and noted in the commission by the prothonotary to be first stated to the witness by the examiner—viz:

1. Do you know or have you any reason to believe that the parties have cohabited together since the cause of complaint arose? If so to what extent and how do you know it, and what reason have you for so believing?

2. Have you any knowledge of the cause of the separation of the parties? If so state the same, and how do you know it?

3. Have you any knowledge of any conduct showing any secret agreement, understanding or collusion between the parties for the purpose of conniving at a divorce? If so, state what you know.

4. Have you any knowledge, by report or otherwise, where the respondent now is or resides? If any, state what you know. 18, 30.

907. When testimony is to be taken before a magistrate or commissioner, if personal notice has not been given, he must publish in a public print, within the county *where the testimony is to be taken*, in two consecutive weekly numbers thereof, full notice, giving the names of the parties and of the court, and of the time and place when and where the examination will take place, and he must certify that the same has been done, and attach a copy of the publication to his return. The testimony thus taken must be enclosed in an envelope, carefully sealed and directed to the prothonotary of the court, by whom, or by a judge of the court, it shall be opened and regularly filed with the other papers of the case. 6.

908. Testimony may be taken *de bene*, if necessary, on application to the court, or a judge thereof in vacation, for cause shown. 4.

909. Testimony out of the State may be taken on a commission as in other cases. 2, 45.

910. The testimony, when taken before a magistrate or commissioner, must be enclosed in an envelope, carefully sealed and directed to the prothonotary, by whom, or a judge of the court, the same may be opened. 37.

911. In all cases where there is no return of personal service, and no appearance is entered for the respondent, it shall be the duty of the master, before proceeding to take the testimony upon the merits of the case, to inform himself, by examination of the libellant, and by such other means as he shall deem conducive to the purpose, of the residence and address of the respondent; and thereupon the master shall use every exertion, by personal inquiry within the county, or by registered letters outside of the county, and in case of failure by these means, then by advertisement in such newspaper or newspapers, as, in the opinion of the master, will be most likely to reach the respondent, once a week for four full weeks, and by any other means available, to give actual notice to the respondent of the application for a divorce, the grounds thereof, the name and address of the master, and the time and place of taking testimony in the cause: Provided, that in cases in which the respondent was last known to reside and last heard of in the county of . . . . ., it shall not be necessary to advertise such notice. Thereafter the master may proceed to take the

testimony upon the merits of the cause, but he shall not file his report until he is satisfied that all means available have been used to give actual notice to the respondent; and the efforts to that end shall be set forth in the report. 1, 16, 20, 39.

912. It shall not be necessary in any proceeding for divorce (if the writ has been personally served, 9, 12, 16, 39, 41, 46, 49, 51) to prove the fact or time of marriage, but the allegation in the libel, that on a certain day a marriage was celebrated between the parties, shall be taken as true, unless the respondent files an answer under oath denying such allegation. 8, 9, 12, 13, 16, 18, 26, 27, 28, 29, 35, 39, 41, 46, 49, 51.

913. No testimony shall be taken on behalf of the respondent, nor shall cross-examination of libellant's witnesses be permitted, until an answer is filed, and the prothonotary's certificate thereof produced before the commissioner. 22.

914. The master shall make inquiry of the witnesses and report to the court the ages of the libellant and respondent, and the number, names, ages and residence of their children, if they have any; and in cases where the subpoena has not been personally served, or, after publication, no appearance has been entered for the respondent, and the other means of giving actual notice to the respondent shall have failed, the master shall, if possible, give written notice of the proceedings to such children of the respondent as have attained their majority, or if there are none, then to the parents, brothers and sisters or other near relatives of the respondent, requesting them to assist him in giving actual notice to the respondent, and report to the court what efforts he has made to effect such notice, and the result thereof. 1, 20.

915. Where the residence of either or both parties is given as within this county, the master shall, by personal inquiry, satisfy himself and report to the court, whether the stated residence is correct and bona fide, and the length of time the libellant has resided in this State, and also whether the respondent has ever resided in this State, and if so, when and where. In case the residence of either party is given as in another county of this State, the master shall make such inquiries by letter to the sheriff of such other county. 1, 20.

916. When a case is ready to proceed to the testimony upon the merits, the master shall examine each witness specially and

in detail upon all the matters set forth in the libel and the answer, and upon such other matters as may appear to be relevant and material. And it shall be his duty, whether requested by either of the parties or not, to summon and examine such witnesses as he may have reason to believe have knowledge of any matters relevant and material to the just and proper determination of the cause. 1, 20.

917. Neither party shall be allowed to examine any witness called in his or her behalf until after the master shall have finished his examination of such witness, but after the master's examination of such witness, the party calling him may supplement his examination in chief, and upon the conclusion of such supplementary examination the opposite party may cross-examine. 1, 20.

918. The master shall have the usual powers of a master in equity, in regard to the detention of witnesses for examination, and the general course of the proceedings before him, subject to the directions of the court from time to time upon motion of either party. When objection is made to the competency or relevancy of testimony, the master shall note the objection, and thereupon proceed to take the testimony subject to the objection. 1, 20.

919. The proceedings before the master, and upon exceptions to his report, shall be governed by the practice in courts of equity so far as the same may be applicable; and he shall cross-examine in his discretion any witness produced before him, or order the propounding of additional interrogatories to witnesses examined upon commission. He may also, in his discretion, refuse to proceed in a cause until certain testimony required and indicated by him shall have been produced; but in such case the party may apply to the court for an order upon the master to proceed, before the granting of which the court shall receive from the master a report in writing setting forth what he has required from the party and his reasons therefor, whereupon the court shall make such order as the case may require. 13.

920. In taking testimony in proof of the cause of divorce, the examiner shall require of the witnesses precise details of the facts proving the charges (and upon such other matters as may be relevant and material, 15), and shall not return general

affirmative or negative answers to the questions proposed by the interrogatories or any cross-interrogatories. 2, 7, 8, 23, 32, 38.

921. In ex parte proceedings the proof shall contain evidence of the marriage, citizenship and residence of the libellant, and the desertion or other grounds of divorce as alleged in the libel and required by law, and also of the non-residence of the respondent in the county, otherwise the decree will not be made. 6, 30, 37, 48.

922. The master shall keep minutes of his meetings, noting the attendance and adjournments, and at whose instance the adjournments are had, and annex the same to his report. 39. If either party shall be of opinion that the other party, or the master, is unnecessarily or unjustly delaying the proceedings or increasing the expense thereof, he may notify the master of his exceptions in that regard, and the master shall note the same in his report for such action of the court as may be adjudged just and proper. 1.

923. The master may at any time with the leave of the court require security for the payment of his and the prothonotary's costs, and may decline to proceed further until such security shall be entered. 1.

924. The examiner must embody in his report a statement of the time and manner of service of notice of taking the depositions, together with the evidence of such service. 43.

925. The examiner must certify to the fact and kind of notice, and in cases falling within the Act of 20th June, 1893, P. L. 471, he shall certify whether the notice required by said Act has been given, 11, so that the respondent has had a reasonable time to appear and defend. 20.

926. Upon a reference to report a final decree it shall be the duty of the master and examiner to make strict inquiry into, and report specially upon all facts upon which the jurisdiction of the court is founded, including the residence and domicile of the respective parties at the date of marriage, at the date or dates when the alleged cause or causes of divorce arose, and at the date when the proceedings in divorce were begun; whether the alleged residence within the commonwealth has been bona fide or merely pretended and colorable; whether any alleged adultery has been condoned; whether any reasonable cause has

existed for any alleged desertion ; what circumstances of provocation or palliation have existed, in cases of alleged barbarous treatment ; whether any circumstances exist indicating connivance or collusion between libellant and respondent ; and generally to find and report in each case as to whether the application for divorce is properly subject to the jurisdiction of the court, free from artifice or collusion, founded upon meritorious and sufficient cause, supported by competent and satisfactory evidence, and based upon lawful and regular proceedings. 13.

927. The examiner shall report to the court his findings as to all matters of fact alleged in the petition, and as to all questions of law raised by the evidence or the pleadings (and the form of decree, 18) stating particularly the time and place of marriage, the domicile of the parties at that time, the time and place where the alleged cause of divorce arose, and the domicile of the parties at that time, at the time of filing the libel and at the time of making the report, so far as the same can be ascertained. 11.

928. The commissioner need not sum up the testimony or report his conclusions. 47.

929. The master shall report his proceedings and the testimony, together with his opinion of the case, and shall append thereto the libel and all subsequent papers filed in the case (a copy of all returns to subpoenas, rules and notices and affidavits of service, 16), with a copy of the docket entries (and minutes of his proceedings, 16), and shall file the same in the office of the prothonotary. 1, 3, 10, 16, 20, 23, 39.

930. After the proofs have been completed, and the case submitted to the court for disposition, no motion to take additional testimony will be entertained, except for reasons which would be sufficient to authorize the granting of a new trial. 11, 14.

931. When defence has been made and no issue awarded, and the testimony has been closed and returned on both sides (an application for an allowance pendente lite and counsel fee has been made, 47), (or when, at any preceding stage, exception is taken and filed to the petition or answer or other matters, 17, 23, 45, 46, 48, 49) the case shall go immediately upon the argument list, there to be heard and disposed of. 17, 23, 45, 46, 47, 48, 49. So also at any preceding stage, if exception is

taken and filed to the petition or answer or other matter, the same shall immediately go upon the argument list, there to be heard and disposed of. 5, 14, 16.

932. No report shall be acted upon by the court until at least forty-eight hours have elapsed since the filing of the same, during which time either party may file exceptions to the same, setting forth any ground of complaint touching the action of the commissioner, or any reason arising upon the record why the divorce should not be granted. 23.

933. At the hearing it shall be the duty of libellant's attorney to furnish the court with all the papers and evidence, with a brief or statement of the case, containing the alleged cause of divorce, and a history of the proceedings therein, and prepare a proper decree in case the divorce is granted, 6, 11, 17, 30, 37, 45, 47, 48, and if in the opinion of the court a proper case has been made out, and the proceedings have been conducted according to law and the rules of court, the decree will be made. 5, 46, 49.

934. If the master recommends a divorce the counsel for libellant shall draw and submit the decree. 16.

935. The solicitor for the libellant shall prepare a decree and submit the same to the court, with the report of the examiner, when the disposition of the case is moved for. He shall also present the report of a master, or an abstract from the testimony, showing by what witnesses the facts of the libellant's case are shown, viz. :

1. Residence of the libellant.
2. Service on the respondent, when and where made.
3. The marriage, when and where contracted.
4. The desertion or other grounds of divorce :
  - (a) When did it take place ?
  - (b) Where were the parties domiciled at the time ?
  - (c) What was its effect upon the relations between the parties ?
  - (d) Have the parties lived together since ?

5. If the case is one for alimony, the value of the husband's property, his income, age, health, and occupation.

6. If the ground be adultery, state the name of the person with whom committed, the time and place, when it first came to the knowledge of complainant, and when the separation occurred. 4.



936. When the commissioner's report is filed, the prothonotary shall enter a rule to show cause why the decree prayed for should not be made. The case shall then be placed upon the argument list and heard in its order, but it may be taken up at any time by leave of the court. 22.

937. When the report is laid before the court the prothonotary (the examiner, 21, 40) shall append to the same the libel, answer, interrogatories, rules and all entries made in the case. 2, 7, 8, 15, 21, 32, 38, 40.

938. When the case is reached for hearing, the counsel for the libellant shall furnish the court with a brief, setting forth briefly the facts, and the time and manner of service of the subpoena, the notice of taking depositions, and the rule to show cause. 43.

939. When the master's report has been approved by the court, a rule may be entered of course on the respondent, to show cause why a decree of divorce should not be granted. All such final rules for divorce shall be returnable to (the first Saturday of each month and the third Monday of September, 1), (the first day of the term, 20), and shall be then heard on a divorce list. Notices of such rules shall be served on the respondent personally, if possible, but if the notice cannot be served on the respondent personally, then it shall be served on his or her counsel of record, if there be one, ten days before the time fixed for hearing the rule. If the notice cannot be personally served on the respondent, and there is no counsel of record, the libellant shall publish a notice once a week for four full weeks in the legal newspaper and one daily newspaper in this county, and give such other notice by advertisement or otherwise as the court may direct in the particular case, in the following form :

To A. B., late of No. \_\_\_\_\_ Street,  
\_\_\_\_\_, Pennsylvania.

You are hereby notified that a final rule for divorce has been granted against you at the suit of C. B., your \_\_\_\_\_, which will be heard in the Court of Common Pleas, No. \_\_\_\_\_, of \_\_\_\_\_, of \_\_\_\_\_ Term, 18 \_\_\_\_ No. \_\_\_\_\_, on Saturday, the \_\_\_\_\_ day of \_\_\_\_\_, on which day you may appear and show cause, if any you have, why such divorce should not be granted against you.

C. D.,  
Attorney for Libellant. 1, 20.

940. In all cases an affidavit of the time, place and manner of service shall be filed, and in case of service on the counsel of the respondent, or by publication, the efforts which have been made to serve the respondent personally shall be stated in the affidavit. 1, 20.

941. After the report of the examiner has been filed, the libellant shall take a rule on the respondent to show cause why the divorce should not be decreed, which rule shall be served personally (one week, 11) (thirty days, 43) before the return day thereof; but if the respondent cannot be found, of which fact satisfactory proof shall be made and filed, the said rule shall be published for (two weeks in two newspapers, one being the legal newspaper, 11) (for three successive weeks in some newspaper of the county, a marked copy of which newspaper shall be sent to the last known post office address of the respondent. 43). Provided, that the notice required by this rule shall be in addition to all other notices required by any Act of Assembly in particular cases. 11.

942. Whenever personal service is required to be given, such notice must be served at least ten days before the hearing, in the form and manner (either of the forms of service) prescribed by the Act of Assembly of 13th June, 1836, Sec. 2, for service of a summons in a personal action. 43.

943. (In all cases where the libel is returned "served," 32), before a decree in divorce is granted, there shall be a rule to show cause taken and served on the respondent. Service of this rule shall be as follows:

(a) Where the respondent can be found, the rule shall be served personally at least one week before the day on which it is made returnable.

(b) Where the respondent cannot be found, service shall be made by publication for two successive weeks in the paper designated by the court for the publication of legal notices.

Where service is by publication, satisfactory proof shall be made that personal service could not be had. 32, 45.

944. In all cases where the process is returned non est inventus and publication, the rule for divorce shall be published in two newspapers, designated by the court, at least once a week for two weeks before the divorce is decreed. 32.

945. After the trial of an issue by jury a rule for divorce

need not be taken, but no decree shall be entered until five days after verdict has elapsed. 11.

946. No decree for divorce shall be granted until all the costs of the cause are paid, 1, 2, 3, 8, 11, 13, 15, 16, 20, 26, 32, 39, 45 (and so certified to the court, 14), unless for special reasons shown to the court. 36.

947. Upon proceedings ex parte, a decree will only be made in open court, and not until the expiration of ten days after the master has made report. 15.

948. Service of notices or rules upon the respondent shall not be made by the libellant, or the next friend, or the counsel of record. 1, 20, 39.

949. The master's fee shall be (\$25 and \$10 additional for each meeting after the first, 1), (\$10 per day for each day necessarily spent, 20) in the discharge of his duty; and whenever it shall be necessary for him to incur any expense under these rules he may demand from the libellant the sum required for such expenses before they are actually incurred; and thereupon the proceedings shall stay until the said sum be paid. 1, 20.

950. The fees of the examiner shall be taxed by the prothonotary at a sum not exceeding \$10, except when a larger amount is allowed by the court, on motion, and for cause shown. 36.

951. The commissioner shall be entitled to charge and receive the cost of publication and of his affidavit, and a fee of ten dollars, and in addition thereto, for the testimony taken, twenty-five cents for every one hundred words. 47.

952. When not more than a single day has been devoted to the hearing of testimony in a cause or matter referred, the fees of the master for taking the testimony and making his report, shall not exceed \$10, and he may tax \$5 in addition for each day besides the first upon which he shall have heard testimony or argument. But the court, upon application of the master, may make a special allowance in a particular case for cause shown. 13.

#### EMINENT DOMAIN

[See Condemnation Proceedings.]

**EJECTMENT**

[See also §§ 1157, 1158, 1397 and 1472.]

953. In all actions of ejectment now pending, or hereafter instituted, the plaintiff may file an abstract of the title or facts on which he relies for recovery, giving a reference to all records, and a concise statement of all matters resting in parol, and thereupon (at any time after appearance, 11) may serve upon the defendant, his agent or attorney, a written notice requiring him to file within (ten days, 27) (fifteen days, 21, 28, 33) (twenty days, 6, 9, 26, 30, 41) (thirty days, 13, 19, 43, 45) (sixty days, 11, 35, 37) after service, an abstract of the title or facts, upon which he relies for his defence (together with the plea of "not guilty," 11) and upon failure of the defendant to comply with said notice (the prothonotary shall enter said plea, as of course, 11) (and the plaintiff shall also be entitled, on motion in court, to such judgment as may be warranted by his own abstract, 6, 11, 28, 30, 33, 35, 37) he shall not be permitted on the trial to set up any title in defence. 9, 13, 19, 21, 26, 27, 41, 43, 45.

954. At any time after appearance (and before plea, 30) the defendant may serve upon the plaintiff, his agent or attorney, a written notice requiring said plaintiff to file within (ten days, 27) (fifteen days, 21, 28, 33) (twenty days, 6, 9, 26, 30, 41) (thirty days, 13, 19, 43, 45) (sixty days, 11, 35, 37) after service, an abstract of the title or facts upon which he relies for recovery, and upon failure of the plaintiff to file such abstract, giving a reference to all records, and a concise statement of matters resting in parol. judgment of non est may be taken upon præcipe in the prothonotary's office. 6, 9, 11, 13, 19, 21, 26, 27, 28, 30, 33, 35, 37, 41, 43, 45.

955. In all actions of ejectment hereafter brought, it shall be the duty of the plaintiff, either by himself, his agent or attorney, to file in the office of the prothonotary, on or before the first day of the term to which the writ is returnable (thirty days after return day, 37) a statement containing a description of the land, together with the number of acres and the proportion thereof which he claims, and the purpose for which possession is claimed, if such purpose is limited, and an abstract of the title or facts on which he relies for his recovery, and where the

same is matter of record, a reference thereto. 50. On failure of the plaintiff to file such abstract or statement, judgment of non pros shall be entered by the prothonotary on præcipe of defendant's attorney. 5, 14, 17, 18, 36, 37.

956. The plaintiff having filed his abstract of title, the defendant shall plead "not guilty," and enter his defence, if any he hath, for the whole or any part thereof, before the next term, and at the time of entering his plea he shall by himself, his agent or attorney, file a statement containing an abstract of the title or facts on which he relies for his defence, whether the same be in writing or otherwise, and where the same is matter of record a reference thereto, together with a specification of as much of plaintiff's title as he denies. 50. The failure of the defendant to file the abstract and statement required by this rule shall be deemed a confession of the facts set forth by the plaintiff, and that he has no defence thereto. And, thereupon, on motion in open court, the plaintiff shall be entitled to such judgment as may be warranted by the facts set out in the abstract and statement filed by him. 5, 14, 17, 18, 36, 37.

957. In actions of ejectment the defendant may call for a bill of particulars with the same effect as in other cases. On such call the plaintiff shall within ten days file an abstract of his title and the facts he relies on for a recovery. Where such bill of particulars is furnished on call from the defendant, it shall be his duty to file with his plea of not guilty an abstract of his title and the facts he relies upon to defeat the title of the plaintiff. 32.

958. On failure of the plaintiff to file such bill of particulars when called for, the defendant may, on motion in open court, have judgment of non pros; and on failure of the defendant, in such case, to file the abstract of his title and statement, his plea, if any there be, may, on motion in open court, be stricken off, and judgment for want of a plea be entered against him. 32.

959. When an action of ejectment is at issue, either party thereto may demand from the other in writing to furnish to the demandant, within fifteen days thereafter, a short abstract of the title upon which the party's claim to the real estate is founded, which abstract of title shall be furnished to the

demandant at the expense of demandant within the time aforesaid. 51

960. In all actions of ejectment either party shall upon at least thirty days written notice from the opposite party, his agent or attorney, file in the office of the prothonotary a written statement or synopsis of all the documentary proof he proposes to offer in evidence upon the trial, which statement or synopsis shall set forth the date and specify the names of the parties to, and the substance and nature of each document or instrument of writing, and shall be filed at least six weeks before the first day of the term at which the cause is set down for trial, and no documentary proof other than that so stated and filed shall be received in evidence on the trial. Provided, that if any such proof shall come to the knowledge of such party subsequently to the filing of such statement, and before the day of trial, he may furnish a supplementary statement of the same, accompanied by an affidavit that the same was not within his knowledge, or was not accessible, at the time of filing such statement, whereupon the opposite party shall be entitled to a continuance, if taken by surprise. 44.

961. In ejectments (and actions of trespass where the title to lands comes in question, 20, 46, 47, 49) either party (having filed his own abstract, 10, 40) may obtain a rule upon his adversary to file an abstract of his title, and a specification of all special facts and equitable matters which he intends to rely upon, which rule shall be returnable within (fifteen days, 3, 10, 16, 40, 42, 47) (twenty days, 4) (thirty days, 20, 23, 39, 46, 48, 49) (in the same time as rules to plead, 24, 25) after the service thereof upon the party or his attorney (and if not complied with, the party shall be entitled to a rule to file such specification in two days, 4, 24, 25, 29, 30, or judgment); and if such (second) rule be not complied with, the court (the prothonotary, 23, 39) will enter judgment of non pros or by default, 10, 16, 20, 23, 24, 25, 39, 40, 42, 46, 47, 48, 49, if it be the plaintiff, and if the defendant it shall be taken as a confession that he has no title 3.

962. The defendant (either party, 28, 33), after having filed his abstract, etc., may enter and serve a rule on the plaintiff to admit or traverse the title and facts set out therein, and if not denied by replication (within (fifteen days, 17) (twenty

days, 30, 36, 37) after notice), they shall be taken as admitted on the trial. 5, 17, 28, 30, 33, 36, 37.

963. If the plaintiff shall annex to his abstract of title an affidavit that he believes that he and the defendant both claim from a common source of title, to which his abstract as filed shall be traced, and the defendant shall afterwards file an abstract of title deducing such title from another source, the plaintiff shall not be concluded by his abstract as filed, but shall be at liberty to file another abstract deducing title from the Commonwealth or otherwise. 19.

964 For sufficient cause shown, the court will enlarge the time for furnishing the abstract of title, 4, 6, 9, 13, 14, 19, 21, 23, 26, 27, 29, 30, 37, 41, 43, 45, 47, 48, and may set aside a judgment of non pros, or allow the defendant to file his abstract of title, if the application is promptly made, 37, at the next term. 16, 42.

965. Neither party shall be entitled to demand an abstract while the case is on the trial list. 13, 20, 45, 46, 49.

966. All abstracts of title and facts shall be verified by the oath or affirmation of the party or some one having knowledge thereof. 3, 30, 37.

967. Abstracts shall contain a specification of all facts or equitable matter on which the party relies; a reference to all records and abstracts thereof; and as to deeds, mortgages, or contracts, shall give their date, the date of acknowledgment, and if recorded, when and where recorded. 13, 45.

968. If either party relies on an instrument of writing not of record, he shall attach a copy of such instrument to his abstract of title or statement on file, otherwise the same shall not be given in evidence on the trial. 17.

969. The abstracts shall be as brief and succinct as possible. When recorded papers are referred to, it shall only be necessary to give the names of the parties, the dates, and the book and page of the record. 32.

970. Judgment against the defendant for default of an abstract shall not be entered before the second term, but the plaintiff may have his rule returnable to that term; and the plaintiff may, if he chooses, put the case on the list for trial at the second term, and this shall not prevent him from taking

judgment by default for want of an appearance, or for failure to file an abstract. 42.

971. Facts and records averred in the abstract and not denied shall be deemed admitted, and upon the trial the abstracts or statements on file may be offered as full proof of the admitted facts, and the evidence shall be confined to the facts respectively denied by the parties in their statements or abstracts. 10, 13, 14, 17, 18, 37, 47. Either party may offer the opposite party's abstract in evidence. 11.

972. The evidence of the party filing an abstract or specification shall be confined to the facts therein specified and set forth, 17, 19, 37, 50, but the same may be amended subject to the rules governing the amendment of pleadings, 4, 18, 20, 29, 37, 46, 49; and provided, further, that when a rule has been taken to file an abstract, etc., the case shall not be put on the trial list while the rule is pending. 16, 24, 25, 47.

973. The execution and due recording of all recorded instruments, and the regularity of all public records to which reference is distinctly made in the abstract of either party (and all parol contracts distinctly set out, 6, 9, 30, 41, 48) shall be deemed admitted unless the traverse thereof shall distinctly state the grounds of objection thereto. 6, 9, 28, 30, 33, 35, 37, 41, 48.

974. If at the trial either party offers in evidence, or relies upon other grounds of objection than those contained in the abstract or specifications, it shall be a sufficient reason, if the adverse party be taken by surprise, to continue the cause, and grant a rule on the former to pay the costs of the term, and such other costs as the court may deem reasonable. The pendency of a rule to file an abstract shall be no ground of continuance, unless the court be of opinion that the cause would thereby be expedited. 28, 33, 35.

975. In actions of ejectment the plaintiff shall be entitled to a plea within thirty days after the second term, and in default thereof the prothonotary shall enter the plea of "not guilty," saving to the defendant the right to plead any special plea before trial, with leave of court. 46, 49.

976. In actions of ejectment the defendant shall file his plea with his appearance. 47.



977. Actions of ejectment, when an appearance has been entered for defendant, may be ordered for trial, although defendant has not entered a plea; the plaintiff or prothonotary may enter the plea of "not guilty" for the defendant at any time, 5, 9, 14, 16, 17, 18, 27, 28, 35, 36, 41, 42, after the term to which the writ is returnable. 23, 39.

978. Where the defendant, or one of several, disclaims title and denies (or restores, 4) possession of the land claimed in the action, he shall file his affidavit to that effect; and unless the plaintiff (within 20 days after notice, 6, 9, 10, 16, 28, 30, 35, 37, 48) (thirty days, 18), traverses the denial of possession by affidavit filed, the cause shall stop as to all who disclaim, 9, 10, 16, 17, 18, 28, 30, 33, 35, 36, 37, 41, 48, 50, but if the plaintiff elect to go to trial upon such disclaimer, the cause shall be tried on the issue thus made. 4, 6.

979. If a defendant disclaims as to part and offers to confess judgment therefor, and the plaintiff refuses to accept said offer, and does not on the trial recover more than was embraced in said offer, he shall pay all costs subsequent thereto. 4, 6, 9, 10, 16, 17, 18, 28, 30, 33, 35, 36, 37, 41, 48, 50.

980. If the plaintiff intends to claim mesne profits he shall give notice thereof in writing (under oath or affirmation, 2) to the defendant or his attorney of record, at least (fifteen days, 3, 14, 45, 50) (twenty days, 19, 29, 30) (thirty days, 8, 9, 11, 12, 16, 20, 21, 23, 28, 33, 35, 36, 39, 41, 48, 51) (six weeks, 6, 37) (sixty days, 4, 13, 22, 26, 34, 43, 44) before the trial, stating the amount claimed and the length of time during which he demands such profits, 16; otherwise he shall not be permitted to claim mesne profits in that action, 2, 3, 4, 6, 8, 9, 11, 12, 13, 14, 19, 20, 21, 23, 26, 28, 29, 30, 33, 34, 35, 36, 37, 39, 41, 43, 44, 45, 48, 50, 51, unless such statement of claim be embodied in the writ. 22.

981. Judgments in default of appearance or plea may be taken on motion in actions of ejectment to enforce the payment of purchase money due on land contracts, conditioned to be released upon payment of the balance due thereon at such times as shall be designated by the court, and the prothonotary shall liquidate such balance from the contract between the parties, or a statement thereof under the oath of the plaintiff. 6, 30, 37.

982. In all actions of ejectment brought to compel pay-

ment of purchase money, where a verdict is rendered in favor of the plaintiff, and the land to be released in a time specified in the verdict, if the amount found to be due is not paid within the time stipulated, the plaintiff will be permitted to take out a writ of hab. fac. poss., and fi. fa. for costs. 8, 26, 29.

983. In all cases in ejectment where the plaintiff seeks to recover upon an equitable title, he shall give notice to the adverse party, or his attorney of record in the cause, of the ground of his claim and the title on which his claim was founded. In like cases, where the defendant relies upon a defence purely equitable, he shall give notice of the grounds of his defence and the title on which it rests, to the plaintiff or his attorney of record in the cause, each of which notices must be served fifteen days before the time of trial, and in default of so doing, the party who alleges a surprise on the production of an equitable claim shall be entitled to the continuance of a cause at the costs of the party who relies upon such equitable title. 21.

984. In ejectment for purchase money, on default of payment in accordance with a verdict or award for plaintiff, the court will, on motion, make an order that the amount fixed by such verdict or award, with interest after default, and costs, be levied for the use of the plaintiff by a sale of the land, the surplus, if any, arising from such sale, to be paid to the party entitled thereto as on other judicial sales: Provided, that if it shall appear on trial that the amount paid as purchase money is not equal to the interest then due and one hundred dollars of the principal, the judge or arbitrators shall so certify; and in such case, on default of payment, the judgment for plaintiff may, on motion, be made absolute, and a habere facias possessionem may thereupon issue. 22.

985. Where the plaintiff claims to recover part or parts of a tract or tracts, and his writ is so general as not to describe the land claimed with such certainty as to enable the defendant to see the extent and bounds of his claim, he shall, on or before the return day of the writ, file a declaration specially describing the land claimed, or file a draft of the land as he claims it, with adjoinders thereto. 16.

986 When a writ of estrepment is issued, at the instance of the plaintiff, in any action of ejectment, the same shall be dissolved upon the application of the defendant, upon his giving

bond to the plaintiff in a sufficient amount, and with sufficient surety or sureties to be approved by the court or a judge in vacation, the condition of which bond shall be "that if the plaintiff shall be successful in the said action, and obtain final judgment therein, and the defendant shall not bring a new ejectment for the premises in controversy within six months after the rendition of such judgment, or shall, within six months thereafter, bring a new ejectment, and the same shall be determined against him, so as to conclude the right; or if judgment pass in such second ejectment in favor of the defendant, and the plaintiff shall, within six months thereafter, bring another ejectment, and finally obtain judgment so as to conclude the right in his favor, the defendant shall indemnify and pay the plaintiff for all waste done or permitted on the premises in controversy from and after the issuing of the writ of estrepment, and while and during the time the defendant shall remain in possession;" which bond shall be filed in the cause, by order of the court, for the use of the plaintiff. 47.

### EQUITABLE RELIEF

[See Equity and Motions and Rules to Show Cause.]

### EQUITY

[See also § 1742.]

987. The rules of equity practice adopted by the Supreme Court of Pennsylvania, May 27, 1865, and the supplements and additions which have been and may be adopted by the said court are adopted as the rules of equity practice of this court, 7, 9, 16, 20, 22, 23, 27, 39, 45, 46, 49, and ordered to be recorded with the rules of this court. 11.

988. The prothonotary shall keep the files of each equity case separate, and for this purpose he shall provide a suitable number of congress tie (or document) envelopes. 7, 45.

989. No unprinted papers in an equity case, containing more than one hundred consecutive words, shall be filed without leave of court, on motion to suspend the equity rules, except in cases provided by the equity rules. 16.

990. Any case at issue, which is to be heard by the court in the same manner that an action at law, wherein trial by jury has been waived, is now heard by courts of law, the court shall, at the instance of either party, upon reasonable notice to the other party not exceeding thirty days, hear the case, and the prothonotary shall place notice of the same in some conspicuous part of his office, which shall be sufficient notice of the trial to all parties concerned: Provided that no hearings will be had in August. 51.

991. The prothonotary shall prepare an issue docket in which all cases in equity at issue shall be placed. 51.

992. Trial lists for equity cases will be made out from time to time, on special order, as the business may require. Cases for argument shall be immediately placed on the argument list the same as other causes. 14.

993. Thirty-five days prior to each equity term an equity trial list shall be made up by the prothonotary, of all cases at issue on matters of fact for trial at that term. The cases set down thereon shall be called for trial in accordance with the rules provided for trials of actions at law, and the trial of the same shall be conducted in accordance with the rules laid down by the Supreme Court with regard to the same, and, when applicable, the rules governing trials in actions at law. 7.

994. Immediately after the arguments in any trial in equity are concluded, counsel for each of the parties shall hand to the judge presiding, a brief, either printed or plainly written, containing in separate paragraphs, numbered consecutively, a succinct statement of the several propositions of law or fact contended for, together with a reference under each proposition, if it be one of law, to the authorities in support of it, or if it be one of fact, to the pages of the testimony relied on as establishing it; otherwise said propositions may be considered as waived 3.

995. After a trial in equity has been had, and the court has filed its findings of fact and conclusions of law, the prothonotary will notify in writing the attorney of each party in interest. If either party is dissatisfied with the findings or conclusions, exceptions thereto must be filed within ten days after notice is received, unless a longer or shorter period be specially fixed; and these exceptions will thereupon be considered, and a final

decree entered. Argument upon the exceptions will not be of course, but only when ordered by the court. 12.

996. In cases in equity tried before one or more of the judges under the equity rules, unless exceptions are filed to the findings of law or fact within twenty days after such findings have been filed in court, a decree will be entered. 1.

997. In case exceptions are filed to the findings of law and fact by the court, they will be heard upon the general argument list. 1, 23.

998. An equity argument list will be made out for the regular argument days. 7, 11.

999. No preliminary injunction will be granted without notice to the opposite party, except where the case is very exigent, or the purpose of the injunction would be defeated by such notice. 36.

1000. No preliminary injunction will be granted unless affidavits are filed with the bill, setting out and supporting the facts therein stated. A mere general affidavit to the truth of the matters contained in the bill will not be deemed sufficient. 36.

1001. Where a preliminary injunction is issued without notice to the opposite party, the sureties on the bond required by law, shall make affidavit in writing that they are worth, over and above all liabilities, and any exemption allowed by law, at least the amount of the penalty of the bond. 36.

1002. Exceptions to injunction bonds shall be in writing, and where the matter of exception is not apparent on the face of the bond or record, shall be verified by affidavit. Exceptions must be filed within three days after the injunction is served, else they will be disregarded. Such exceptions may be considered by the court, or the judge at chambers, on one days notice to the opposite party, and if the bail is not justified, or other sufficient security given, the injunction shall be dissolved. 36.

1003. No testimony in injunction cases shall be taken on either short rule or notice, in less than twenty-four hours; and the short rule may be entered in the prothonotary's office as a matter of course. 51.

1004. When an extension of time to answer a bill is asked

for by the defendant, and granted by the court, the defendant shall not afterwards be permitted to demur. 51.

1005. In all trials and hearings before the judge sitting as chancellor, a stenographer will be appointed to take, under the direction of the chancellor, full stenographic notes of the hearing or proceedings that may be had before the chancellor in such suit, action or proceeding, and to furnish him, as may be required, an accurate transcript of said notes in long hand, which transcript when approved and certified by the judge, shall be filed and have the same force and effect of similar transcripts in the law court. 7.

1006. In the absence of an agreement, the compensation of the stenographer for taking and transcribing evidence, and for extra time and services, will be fixed by the court and taxed with the costs. 7.

# EQUITY FEE BILL

JUDICIAL DISTRICTS	1	3	7	9	11	15	16	19	22	23	27	28	33	34	38	39	41	45	46	49	51
1007. SOLICITOR'S FEES																					
Drawing bill or answer.....	\$	10 00	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
All other services in the same proceeding		15 00		10 00			6 00	10 00		5 00	10 00	10 00	10 00		10 00	6 00	10 00	6 00	10 00	10 00	3 00
If all papers drawn by the successful party							10 00	15 00			15 00	10 00	10 00						15 00	15 00	
exceed 6000 words, for each additional				1 00			1 00	1 00	Yes	Yes	1 00	1 00	1 00				1 00		1 00	1 00	
300 words.....							Yes									Yes			Yes	Yes	
Costs of printing additional.....																					
Drawing any pleading for every page of	10					10								34							
30 lines per line of first page.....																					
For each word on first four pages.....	06		01			06								06							
Each subsequent page.....																					
For each word if exceeds five pages.....			0½																		
For every motion and notice thereof to																					
opponent.....	20					20			20	Yes				20				20			25
Service of subpoena, same as at law.....	Yes					Yes	Yes		Yes	Yes				Yes				Yes			Yes
Copy to keep of any filed paper, one-half																					
of allowance of office copy.....	Yes													Yes				Yes			Yes
Copy to keep one-half of one cent for first																					
page and one-third of one cent for																					
rest.....						Yes															
Mileage or survey, each mile circular.....			03																		
Judgment or discontinuance fee.....			3 00																		
Drawing any pleading or paper for first																					
300 words.....									8 00												
For each additional 10 words.....									05												
EXAMINER'S FEES																					
Taking depositions per line of 10 words...	05		03		03	05			02			02	02	02				03			
" " per page of 300 words.....				50			40	50		40	50					40	50		50	50	
Exhibits, each.....	25				25				25			25	25					25			
(Copying exhibits, each 10 words.....																					
Administering oaths or affirmations.....	12½			20	10	10	20	20	10	20	20	15	15	12½		20	20	10			
Subpoena (same as prothonotary).....	Yes		50			25	Yes					Yes	Yes	Yes							
Attesting and returning depositions.....	1 50			2 00	1 50	50	1 00	2 00	1 50	2 00	2 00	2 00	2 00	1 50		2 00	2 00	1 50	1 00	1 00	
When a meeting is fixed and nothing done			1 00	2 00			2 00	2 00		2 00	2 00	2 00	2 00			2 00	2 00		2 00	2 00	
(Same as if a deposition one page long of																					
30 lines was taken).....	Yes					Yes								Yes							

## EQUITY FEE BILL—(Continued)

[illegible]



# EQUITY FEE BILL—(Continued)

JUDICIAL DISTRICTS	1	3	7	9	11	15	16	19	22	23	27	28	33	34	38	39	41	45	46	49	51
1002. MISCELLANEOUS																					
Sheriff's service of any paper same as of a summons	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Service of subpoenas to testify same as at law.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Witnesses' fees (same as at law) (each day).	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Fees of commissioners to make partition, or to admeasure dower, of surveyors.	Yes	Yes	1 00		Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
of court	2 00		2 00			2 00	3 50			3 50		Yes		2 00			3 50	Yes			
day.	1 00			Yes		1 00	1 50	Yes		2 00	Yes	Yes	Yes	1 00		1 25		Yes	Yes	Yes	Yes
service at law												Yes	Yes								
Service on non-residents, actual expense, not exceeding.												10 00	10 00								
Service by publication, actual expense, not exceeding.												10 00	10 00								
Referee for each day actually engaged, not over.		20 00																			
Referee for each meeting adjourned		5 00																			
Mileage of witnesses for each mile.																					
Surveyor for first day.			5 00																		
" for each subsequent day			3 00																		
Draft of survey			1 00																		
Master's fee if not agreed on, to be fixed by court.															Yes						
Other costs as prescribed by Rules of Equity Practice.															Yes						

[In the 32nd District the Equity Fee Bill is the same as in the 1st District, and in the 35th District it is the same as in the 28th District.]

**EVIDENCE**

[See also Books and Writings, Depositions, Ejectment, Experts and  
§ § 81, 465, 491, 593, 605, 640, 656, 774, 777, 778, 780, 788, 801  
884, 885, 1220, 1282, 1442-1446, 1450-1457, 1460-1471, 1485,  
1495, 1509, 1729, 1731 and 1804.]

1010. In any action brought upon a contract, the making of the contract and the execution of the evidence thereof, will be taken to be admitted on the trial, unless it be expressly denied in the affidavit of defense; and if the action is brought upon a book account, every item therein will be taken to be admitted which is not in like manner expressly disputed in the affidavit of defense, unless the defendant makes oath that he is ignorant of the correctness of the account, and demands proof thereof. 12, 51.

1011. In all actions founded on contract, as well as actions of sci. fa. on municipal or mechanic's liens, except such as are prosecuted or defended by persons acting in a representative or fiduciary capacity, and not the original parties to the cause of action, every material averment of fact appearing in the petition, statement of claim, bill of particulars, supplemental petition or statement, replication, answer, affidavit of defence, supplemental answers or affidavits, specifications or any of the pleadings, verified by affidavit, and duly filed of record in the case, shall be deemed at the hearing or trial to be competent evidence of the fact so alleged, without further proof than the offer of such averment in evidence; and no evidence shall be admitted to support, contradict, qualify, explain, modify, or vary such fact, unless the adverse party shall directly and specifically deny or traverse the same by proper plea, verified as aforesaid and duly filed of record in the case. 10.

1012. In actions on recognizances, judgments and other records, except where the same are prosecuted or defended by persons acting in a representative or fiduciary capacity, and not original parties to the cause, every material fact averred in the præcipe, assignment of breaches, bill of particulars, or statement of claim duly filed, or writ issued in the action, shall be deemed to be admitted as competent evidence upon the trial, without further proof, unless the defendant shall deny or traverse the same by proper plea verified and duly filed of record in the case. 10.

1013. In all actions instituted on any bill, note, bond, recognizance, deed, mortgage, assignment or other instrument of writing for the payment of money, or the performance of stipulated duties, of which a copy, or a statement of the place of record authorized by the several Acts of Assembly, shall have been filed at or before the time of filing the statement (and served therewith, 1, 8, 11, 13, 14, 23, 26, 29, 32, 34, 35, 41, 47, 48) (on or before the return day of the writ, 27, or within two weeks thereafter, 4, 43) it shall not be necessary for the plaintiff at the trial, to prove the drawing, acceptance, endorsement or execution thereof (or demand, non-payment, or non-acceptance, and protest and notice thereof, 1, 14, 23) but the same shall be taken to be admitted unless the defendant, or some one on his behalf (knowing the facts, 30) by affidavit filed (within the time prescribed for filing affidavits of defence, 6, 30, 37, 48) at or before the time of filing his plea, shall have denied that such bill, note, bond, recognizance, deed, mortgage, or other instrument of writing, was duly drawn, accepted, endorsed or executed, 4, 5, 6, 9, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 40, 41, 43, 47, 48 (or that demand was duly made, and payment or acceptance refused, and protest duly made, and notice thereof duly given. 1, 14, 23). But this rule shall not apply where executors or administrators, 8, 11, 13, 44, 45, or trustees or assignees, 26, are parties.

1014. The above rule, *mutatis mutandis*, shall apply in cases of payment and set-off pleaded, the defendant filing the copy of the instrument or statement of place of record, with or before his plea (or at any time subsequent thereto, with thirty days notice to plaintiff before the term at which the case shall be tried, 27, 37) and the plaintiff his affidavit of denial with his replication or before, or within ten days (fifteen days, 14, 43, 47) (twenty days, 9, 28, 30, 33, 35, 40, 41) (thirty days, 48) after notice. 5, 6, 9, 14, 27, 28, 30, 33, 35, 37, 40, 41, 43, 47, 48.

1015. In all cases where the plaintiff's cause of action or the defendant's set-off is founded in whole or in part on any bond, note or other instrument in writing, and stated specially in the pleadings (or notice in writing given fifteen days before the first day of the week for which the cause is fixed for trial, 2) the same may be given in evidence without proof of its execu-

tion (or of the handwriting of any party thereto, 2) unless the opposite party shall (at least eight days before the first day of said week, 2) (on or before twenty days, 7, 38) (before the first day of the term give notice that he require such proof to be produced, 15) file an affidavit denying such execution or handwriting: (Provided, that this rule shall not apply to actions by or against executors, administrators or other persons acting in a fiduciary capacity. 2, 15). If the plaintiff shall not receive notice of such set-off twenty days before the first day of the term aforesaid, then the notice to produce such proof shall be sufficient if given within two days after notice of set-off shall be received, 7: Provided, also, the rule shall apply to arbitrations, with the same effect in all respects as to trials in open court. 38.

1016. In actions on instruments of writing, a copy of which shall be filed with plaintiff's statement, and served on defendant or his counsel of record, it shall not be necessary for the plaintiff on the trial to prove the execution thereof, or the handwriting or signature of any person or party thereto, but the same shall be taken to be admitted as alleged, unless the defendant by affidavit filed with or before plea pleaded shall deny the same. 19.

1017. The above rule shall apply to all cases of set-off *mutatis mutandis*, the defendant filing a copy of the instrument with or before plea pleaded, and the plaintiff his affidavit of denial within twenty days. 19.

1018. In actions on recognizances, judgments, mortgages, liens of mechanics or material men, municipal liens, transcripts from the Orphans' Court, or other records, policies of insurance, book accounts, bonds, bills, notes and other instruments of writing, and on all contracts for the payment of money, whether the same be in writing or not, and in all actions founded on contract, express or implied, and in appeals from the judgments of justices of the peace where the cause of action is of the same nature, the plaintiff shall, with or before his declaration or statement, where one is necessary, and in other cases, within ten days after filing his *præcipe*, file an affidavit containing a specification of the items of his claim, a statement of the facts necessary to support it, a full list of credits, and a copy of the book account or instrument of writing, if any, upon which he relies for recovery, or where the statement filed con-

tains these averments, an affidavit of the truth of the facts averred in such statement: Provided, that in actions brought upon the record of any court within the county, or on the record of a deed, mortgage, mechanic's or municipal claim, or other instrument of writing recorded in the county, a copy shall not be required if the plaintiff shall in the affidavit refer particularly to the office, number and term, or book and page where the record of the same can be found. 5, 17.

1019. Plaintiff having filed the affidavit required by this rule, the defendant may at any time after the return day of the writ in original cases, and the first day of the term to which the appeal is entered in cases of appeals, and within fifteen days after service of notice of the filing of such affidavit served upon him or his attorney of record, file an answer thereto, verified by affidavit, denying such items of the claim as are not admitted, and alleging facts relied upon by way of defence, and such items of the claim and material averments of fact as are not directly and specifically traversed and denied by the answer, shall be taken as admitted upon the trial, 50, and copies of any book account, or instrument of writing contained in the affidavit of claim and not denied, shall be read upon the trial without the production of the original or proof of execution. 5, 17.

1020. If the answer of the defendant in whole or in part shall consist of any set-off, credit or payment, or new matter by way of confession and avoidance or otherwise, it shall be verified by affidavit, and shall contain a specification of the items of his claim, a statement of the facts necessary to support it, a statement of such new facts and a copy of any book account, receipt or instrument of writing upon which he relies (unless it be matter of record within the county, in which case a particular reference thereto will be sufficient). Notice of filing such affidavit containing set-off or other new matter shall be given to the plaintiff or his attorney of record, and the plaintiff shall within fifteen days after such notice file a replication, verified by affidavit, denying such new matter or items of set-off as are not admitted, and such as are not directly and specifically traversed and denied by the replication, shall be taken as admitted upon the trial, and copies of any book account, receipt, or instrument of writing, contained in such answer and not denied, shall be read upon the trial without the production of the original or proof of execution. 17.

1021. No evidence will be heard upon the trial of the cause as to any facts not substantially alleged or referred to as a ground of action or matter of defence in the statements then on file in the cause. Either party may at any time before the cause is placed on the trial list supplement his affidavit as of course, but notice of the filing shall be given to the opposing counsel, and shall be replied to within fifteen days thereafter, or the facts therein stated shall be deemed to be admitted. When the cause is on the trial list as made out by the prothonotary, such supplemental affidavit shall be filed only by special allowance of the court, and upon such terms as to notice, costs and continuance as may be deemed just and proper under all the circumstances of the case. 5, 10, 17.

1022. In actions of assumpsit, the affidavit of defence shall state particularly the nature and character of the defence, and shall be notice thereof to the plaintiff; and the defendant shall be confined thereto in his proofs on the trial of the cause, unless on or before (thirty days before, 4) the first day of the term at which the cause is set down for trial, he shall (file of record a supplemental affidavit of defence, and serve a copy thereof on the plaintiff or his attorney, 15) give notice of the additional matters of defence he proposes to make use of. 4.

1023 In actions of trespass, and in actions of assumpsit where no affidavit of defence is required, the defendant shall file, with his plea, a particular statement of the nature and character of any special matter of defence relied upon, which shall be notice thereof to the plaintiff, and proof of no other special matter shall be given, unless on or before the first day of the term at which the cause is set down for trial, he shall file of record a supplemental statement of his defence, and serve a copy thereof on the plaintiff or his attorney. 15.

1024. In actions upon deeds, bonds, bills of exchange, promissory notes, or other instruments of writing, if a copy thereof be filed thirty days or more before the time of trial of any cause, and notice of such filing, together with a copy of said instrument, be served upon the defendant or his counsel not less than thirty days before such time of trial, it shall not be necessary on the trial in court, or before arbitrators, to prove the execution thereof, or the handwriting of the parties, assignors, drawers, acceptors, makers, endorsers or grantors, but the same

shall be taken as admitted; unless the defendant or some one for him shall, within fifteen days after the service of such notice and copy upon him as aforesaid, file an affidavit and serve a copy thereof upon the plaintiff or his counsel, denying that the same was executed by him or with his authority, or that the handwriting is the proper handwriting of said parties, etc.: Provided, that where the action is based upon an instrument of writing of record in this county, no copy of such instrument need be filed or served as aforesaid, if the plaintiff in his notice shall make a proper reference to the record or place of entry of such instrument. 21.

1025. The same rule, *mutatis mutandis*, shall apply in cases of set-off, the defendant filing a copy of the instrument at least thirty days before trial, and the plaintiff his affidavit within fifteen days after service of such notice as aforesaid. 21.

1026. That in all actions founded upon or supported by written instrument or instruments, where the original or a copy of such instrument has been filed with the statement, such instrument shall be admitted in evidence for all legal purposes without further proof of handwriting or execution, unless the defendant, or someone in his behalf, shall, in his affidavit of defence (within four weeks after service of the rule and copy, 22) deny the execution of the said written instrument. 22. And in all cases where by amendment a copy of any instrument has been filed, and after ten days notice to the opposite party, the same will be admitted as if it had been filed as hereinbefore directed, unless the amendment is made on the trial, and there is no continuance of the cause at that time. 18.

1027. Whenever an action shall be brought upon any contract, whether or not the same be evidenced by a writing, or by matter of record, if an affidavit of defence have been filed, the execution of the contract and of the evidence thereof shall be taken to be admitted upon the trial, unless it shall be expressly denied in the affidavit of defence. 8.

1028. When a policy or contract of insurance is declared on, the plaintiff may enter a rule on the defendant to admit or deny the execution of such policy or contract; and it shall not be necessary on trial to make proof thereof, but the same shall be taken as admitted, unless denied by affidavit filed within four weeks after the service of such rule on defendant's agent or attorney. 22.

1029. In all actions founded upon a written instrument, a copy of the same (under oath, 30, 33) shall be filed with plaintiff's statement of demand (or afterwards at least thirty days before the time fixed for trial, 30) otherwise the same shall not be given in evidence, 16, 24, 30, 33, 40, 42 (but this rule shall not apply to instruments duly recorded in the county, 47) and if such copy is filed, the plaintiff need not prove on the trial the execution, assignment, endorsement, or acceptance thereof, but the same shall be taken to be admitted, unless denied by the defendant by affidavit filed with his plea. 39.

1030. When the action is brought in whole or in part on a book account, if the plaintiff shall file with his declaration a copy of his book entries, with a statement of the credits to which he admits the defendant to be entitled, verified by an affidavit (setting forth that the copy of the charges filed is correctly taken from the plaintiff's books of original entry; that such charges were made at or about the time of their respective dates; that the goods were sold or delivered, or the work done, at or about the time that the charges were made in the books; that the charges are correct and the account just; and that the defendant is not entitled to any credit, or to any other than there given), the account shall be deemed admitted; and on the trial such copy and statement, so verified and filed, shall be read to the jury, and shall be evidence of all such items as the book or books, if produced and duly proven, would be evidence of; unless the defendant, at least twenty days before the first day of the term at which the cause is set down for trial (with or before his plea, 16, 33, 41, 42), shall file his affidavit that he verily believes that injustice will be done him unless the plaintiff be compelled to produce his books, 41, and subject himself to a cross-examination, or held to strict proof of his claim; in which case such verified statement and copy shall not be received as evidence. 16, 24, 25, 33, 42, 47 If such affidavit is not filed at or before the time of putting in his plea, a copy thereof must be served by defendant on the plaintiff or his counsel. 11, 20, 23, 46, 49.

1031. If the defendant shall twenty days before the first day of the term at which the cause is set down for trial (at or before pleading, 24, 47), file an affidavit stating that the account is wrong and unjust, and specifying in what particulars,



then the plaintiff shall be required to prove such specified parts or items of his account (and if the defendant is sued in a representative capacity, notice shall be sufficient, 7), which shall, as to all other items, be deemed admitted and established by the copy and statement filed as aforesaid. 16, 20, 24, 25, 41, 46, 47, 49.

1032. If the defendant shall rely, in whole or in part, upon a book account as a set-off to the plaintiff's claim, and he shall, at the time of putting in his plea, file a copy thereof, duly verified, the same shall in like manner be evidence on the trial, unless the plaintiff shall, within at least twenty days (ten days, 47) (two weeks, 16) (with his replication, 42) before the first day of the term at which the cause is set down for trial, file a counter affidavit, as mentioned and specified in the aforesaid rule, which shall have the like effect. 7, 16, 20, 24, 25, 42, 46, 47, 49.

1033. In all actions where the demand or set-off may be proved by books of original entry, if the party shall file (within fifteen days from the return day of the writ, 43) with his declaration, or his plea, a sworn copy of his account, (and a statement as to the character of the book and time of entry, 6, 30, 37, 48) as taken from his original books of entry (including the items, if any, on the credit side of them, 9, 19, 28, 33, 43), the same shall be admitted as evidence where the book itself or any entry therein, would be competent, unless the opposite party, or some one in his behalf, acquainted with the facts, shall, by affidavit filed (within the time for filing an affidavit of defence, or ten days after defendant's copy is filed, 6, 48) at or before the time of filing his plea or replication, deny that he had such dealings with the party as those stated in the account filed, or state that he verily believes that the production of the books of original entries is necessary to a just decision of the cause, 5, 6, 9, 10, 18, 19, 27, 28, 30, 33, 35, 36, 27, 40, 43, 48, and all items of the claim or defence not specifically contested shall be taken as admitted, and no evidence shall be received on the trial except such as relates to contested items. 14.

1034. In actions founded on book accounts it shall not be necessary for the plaintiff to produce at the trial the books of original entries, if the copy of said entries and of the entries of all credits, verified by the affidavit of the plaintiff, his agent or

bookkeeper, stating that said copy is correct and contains all the charges on which the claim is founded, and all the credits to which the defendant is entitled, and that the entries in said books were made in the regular and usual course of said business and at the time therein mentioned, be filed, and notice of such filing, together with a copy of said book account and affidavit, be served upon the defendant or his counsel not less than thirty days before such time of trial, unless the defendant, or some one for him, shall within fifteen days after the service of such copy, file an affidavit, and serve a copy thereof upon the plaintiff or his counsel, averring that he believes that said entries, as given in the copy filed, are not true copies of the books of original entries, specifying the entries to which he objects and omissions of credit, or that the production of said books is necessary to his defence. 21.

1035. The same rule, *mutatis mutandis*, shall apply in cases of set-off, the defendant filing and serving a sworn copy of his original entries, etc., not less than thirty days before the time of trial as aforesaid, and the plaintiff his counter affidavit within fifteen days after service as aforesaid. 21.

1036. In actions on book accounts, a copy of which has been filed, if the defendant in his affidavit of defence does not deny the whole of the charges, the plaintiff on the trial will not be required to produce the books containing the charges not objected to, unless resident within forty miles of the place of trial, nor will he be required to prove such items unless the defendant shall make oath that he is ignorant of the correctness of the account. 8.

1037. In actions on book accounts where a copy of the account has been filed with the declaration or statement, verified by the affidavit of the plaintiff, it shall not be necessary for the plaintiff in the trial to make any further proof, unless the defendant shall have made and filed an affidavit at least six weeks (twenty days, 7, 8, 29) (ninety days, 4) before the time fixed for trial, denying the correctness of the account, in whole or in part; if in part, specifying the items, and in that case the plaintiff will be required to prove the disputed items, 7, 8, 26, but this rule shall not apply to executors, administrators or others sued in a representative capacity, 4, if notice is given by them twenty days before the trial that such proof will be required. 29.

1038. In every case where a sworn copy of account has been filed, the opposite party shall at least twenty days (fifteen days, 30) (four weeks, 22) before the first day of the term when the cause is to be tried (if ruled so to do, 22) file an affidavit specifying particularly the items he objects to, and the grounds of his objections. On the trial all of the account not thus objected to, or objected to on insufficient grounds, shall be taken to be admitted, 9, 22, 28, 33, 36, unless there be in the affidavit a general denial of any such dealings, and subject to the right of the adverse party to offer the books themselves or to give other evidence. 18.

1039. Any party to a suit, plaintiff or defendant, not having previously filed a copy of any paper signed by the opposite party, or of his book account, which he may intend to give in evidence on the trial, may file such a copy, verified by affidavit, and serve notice thereof upon the opposite party, or his attorney, at any time more than thirty days before the first day of the week when the cause is to be tried, and the same shall be considered as admitted, if otherwise competent evidence, unless the opposite party within fifteen days after such notice shall file the counter affidavit required by the foregoing rules. 6, 30, 37, 48.

1040. In all cases where a party relying upon a book account has omitted to file a copy according to the foregoing rule, he shall file the same (with his affidavit, 18), and serve notice thereof upon the opposite party, or his attorney, at least thirty days before the first day of the term at which the cause is to be tried, otherwise no evidence of the matters contained in the account shall be received on the trial. 9, 18, 28, 33, 35, 36, 41.

1041. If the plaintiff neglected to file with his declaration a verified copy of his book account, he may, on filing the same afterwards, enter a rule of course on the defendant to file a counter affidavit within fourteen days, in this form :

Rule on C. D., the defendant, to file a counter affidavit within fourteen days after service of this rule upon him, the plaintiff having filed a copy of his book account verified by affidavit as required by rule of court ; otherwise the plaintiff's book account will be deemed admitted by the defendant, and on the trial will be read to the jury without further proof. 16, 39.

1042. In all cases where the plaintiff claims to recover or set

off a book account, or any demand which he seeks to establish by parol evidence, and the demand is not specifically set forth in the pleadings, after the cause is at issue, either party shall be obliged to furnish to the other, within thirty days after requested in writing by the opposite party, a copy of said accounts, specifying the dates and items, or a specific statement of said demands; otherwise no evidence shall be admitted of said book account or demand. 34.

1043. When the affidavit or counter affidavit, relates only to an independent portion of the plaintiff's claim, or the defendant's set-off, such portions as are not denied or traversed under oath, shall be treated on the trial as admitted without further proof. 6, 37, 41, 48.

1044. All items and material averments of fact in the affidavit of claim, which are not directly and specifically denied by the affidavit of defence, shall be taken as admitted. In like manner all items and material averments in the affidavit of defence not negatived by the affidavit of claim shall be taken as admitted, unless the plaintiff shall within fifteen days from the last day allowed for filing the affidavit of defence, file a counter affidavit directly and specifically denying the same. For the purpose of these rules an averment that the party does not know whether any given allegation or item in the affidavit of the other party is true or not, but that he believes and expects to be able to prove on the trial that the same is untrue, shall be equivalent to a denial. 43.

1045. Every affidavit of defence shall be considered as a plea at length, and defendant will be confined on the trial to the defence and proof of the facts set forth therein. 50. And in like manner the plaintiff will be confined to proof of the facts set up in his sworn statement of claim or copy of the instrument of writing, book entries or record, on which his action is founded: Provided, that the plaintiff may file an amended statement, or the defendant an amended affidavit of defence, on giving notice in writing to the adverse party, his agent or attorney, accompanied by a copy of the proposed amendment, not less than fifteen days before the time at which the cause is set for trial. 18.

1046. If the plaintiff shall file (within twenty days from, 28, 35) (on or before, 27) the return day of the writ (with or

as part of his statement, 14, 50), a specification of the items of his claim, and statement of facts necessary to support it, verified by affidavit, such items of the claim and material averments of fact, as are not directly traversed or denied by the affidavit of defence, shall be taken as admitted. The same rule shall apply to a specification of set-off and statement filed by the defendant, the plaintiff's counter affidavit to be filed within (ten days, 27) (fifteen days, 14) (twenty days, 28, 33, 35) (thirty days, 50), after notice. 27, 28, 33, 35, 50. And no evidence shall be admitted on the trial except such as relates to contested items. 14.

1047. An affidavit of defence filed in the action shall not be deemed to dispense with the affidavits required in the foregoing rules, unless the affidavit of defence itself shall set forth the matter required by said rules, 11, and shall show by its endorsement that it was so intended, and shall be duly served upon the opposite party or his counsel of record. 23.

1048. In actions where either party may wish to give in evidence any written documents not directly put in issue by the pleadings, he shall be entitled, of course, to a rule on the opposite party to admit such documents on the trial of the cause, and if the opposite party or his attorney shall not admit in writing to be filed in the cause the alleged documents (within (five days, 14) (ten days, 5, 9, 24, 27, 28, 35, 40) (thirty days, 43) after service of the rule and exhibition of the documents), the court may order such party to pay the costs of making proof thereof, if it shall appear that he has unreasonably neglected to comply with the rule, 9, 16, 24, 27, 28, 35, 40, 41, 42, 43: Provided, that such admission shall not be construed to extend to the competency or relevancy of such documents to support the issue, but only that they are genuine, or what, on their face, they purport to be. 5, 14.

1049. Where either party may wish to give in evidence any written document, besides that directly put in issue by the pleadings, he may serve a written notice upon the opposite party, or his attorney, to admit the execution of the document on the trial of the cause, at the same time exhibiting it to him for his examination, and if, within five days (fifteen days, 47) thereafter, the party thus served with notice do not notify the other, or his attorney, in writing, of his objections and the

grounds thereof, the document thus exhibited shall be received in evidence (if otherwise competent and relevant) without proof of execution. In cases where, by reason of objection, a party is put to proof of the document, the costs of such proof shall be paid by the party objecting, if, in the opinion of the court, his consent was unreasonably withheld. 36, 47.

1050. If the plaintiff shall file with his declaration or statement, but separate and apart therefrom, a specific averment of facts sufficient to support his claims, verified by affidavit, and serve a copy thereof on the defendant, or his counsel of record, such items of claim and material averment of facts as are not denied by the defendant, by affidavit filed with or before plea pleaded, shall be taken as admitted. This rule shall also apply to specifications of set-off, filed by defendant, plaintiff's counter affidavit to be filed within twenty days after notice to him or his counsel of record. 9, 19, 41.

1051. No affidavit of denial shall be required from any executor, administrator, guardian, lunatic, or committee of a lunatic or habitual drunkard, nor on behalf of any municipal corporation. 22.

1052. This rule shall not apply to actions brought against executors, administrators or guardians, upon the written undertaking of their testator or intestate; nor to cases in which the execution of the instrument is attested by a subscribing witness, and the defendant shall at or before the time of filing his plea in such action make affidavit that the subscribing witness has a knowledge of facts which are material to his defence, and that his attendance as a witness upon the trial is material and necessary to aid him in his defence. 4.

1053. An answer or replication under oath for purposes of admission shall be required from executors, administrators, guardians, committees and others sued in a representative capacity: Provided, that when the action or defence is not founded on some contract or act of the executor or other trustee, an affidavit made by him in such cases, stating that he has made diligent inquiry, and has not been able to obtain sufficient information to enable him to set forth particularly the nature and character of the answer or reply, but that he believes there is a just and legal defence to the items of claim set up in the affidavit of

claim or of defence, shall be deemed a sufficient compliance with this rule. 17.

1054. In all actions by or against partners (or corporations, 11, 13, 14, 18, 21, 24, 25, 36, 45, 47, 48) (executors, administrators, trustees, guardians, public officers and the like, 6, 18, 22, 24, 25, 30, 37, 47), the character in which the party is described on the record shall be deemed admitted (*prima facie*, 2) (unless denied in a special plea, 24, 25), unless an affidavit denying the same be filed with or before the plea, (thirty days before the trial, 21) and stating whether there is any such partnership (or incorporation, etc.) in relation to the subject matter of the action, and who are parties thereto. 1, 2, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 17, 18, 19, 21, 22, 23, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 40, 41, 43, 44, 45, 47, 48.

1055. In all actions (except ejectment, 9, 16, 23, 39, 42, 48) where the suit is by or against executors, administrators, tenants, trustees, guardians, assignees, public officers, corporations, or the like, the character in which the party is described on the record shall be deemed admitted, unless denied in a special plea, 3, 16, 20, 23, 39, 42, 46, 48, 49, verified by affidavit filed (thirty days, 41) (six weeks, 9) before the trial. 9, 41.

1056. Where defendants, or any of them, sued as partners, deny the partnership, they shall state whether there was any partnership in relation to the subject matter, and who were parties thereto. 50.

1057. Whenever any exhibit attached to any deposition, commissioner's, examiner's, auditor's or referee's report, shall be certified on the face thereof by the person taking such deposition, or by such commissioner, examiner, auditor or referee, to be a true copy of the original produced before him, the same may be read upon the trial of the cause, or upon the argument of any rule or exceptions where the original would be evidence: Provided, that the genuineness of such original shall not be in dispute, or that notice to produce the original shall not have been served on the opposite counsel at least (five days, 13, 18, 45) (ten days, 11), before the day fixed for the trial or argument of the said case, 11, 18, 45, or that such request is made and noted upon the record by the person taking the testimony at the time the exhibit to be copied is attached. 13.

1058. On appeals from the award of a jury of view in con-

demnation proceedings, the title of the plaintiff (and the existence of the corporation, 19), shall, upon the trial of the cause, be taken as admitted, unless denied by the defendant by affidavit filed, and notice in writing given to the plaintiff, or his attorney of record, at least (ten days, 19) (twenty days, 37) before the trial, that he will be required to prove the same. 19, 37.

1059. The court will at all times take judicial cognizance of the existence, location, etc., of any street laid out or entered upon the topographical survey of the county town; of the existence of all municipal corporations within the county; and of the corporate existence and charter of any private corporation having its location in the county and duly incorporated, and the charter of which is properly recorded in the office of the Recorder of Deeds of this county. 23.

#### EXCEPTIONS

[See also §§ 117, 145, 146, 148, 220, 233-235, 270, 297, 298, 420-422, 426-429, 433, 447, 462, 463, 518-521, 526-529, 544, 550, 566, 569, 570, 574, 586, 591, 592, 599, 600, 607, 654, 674, 722, 726, 742, 743, 756, 812, 813, 815-820, 823-825, 829, 830, 931, 932, 995, 1002, 1081-1083, 1600, 1605-1609, 1696 and 1714.]

1060. All exceptions to any matter or proceeding shall be verified by the party, his agent or attorney, or some other person for him having knowledge of the facts, 43, unless the same be apparent on the record. 22.

1061. All exceptions to any proceeding in the court, or to any account, auditor's report, or to any other matter brought thereinto, shall be in writing, setting forth specially errors of fact or law, and the grounds of complaint, 41, and when relating to matters not apparent on the face of the proceeding, account, report or other matter, shall be verified by oath or affirmation, otherwise they will be (disregarded, 10, 16, 18, 28, 33, 35, 36, 40) struck off on motion. 4.

1062. It shall be the duty of the party so excepting to cause the issue so raised to be placed on the proper argument list, in order to insure its speedy determination. 4.

1063. If the exceptions so filed allege errors not apparent on the face of the proceedings, the testimony in support thereof shall be presented to the court at its next session for the dispo-



sition of argument cases, and the witnesses may be examined orally, unless the party elects to take their testimony by deposition. 4.

1064. All exceptions shall be specific, both as to matters of fact and of law, and shall be accompanied by an affidavit that the same are not filed for purposes of delay, but because it is believed they raise questions requiring the action and decision of the court in order to prevent injustice. 14.

1065. The court will not notice errors or irregularities not specified in the exceptions filed, unless it be necessary to a just determination of the case. 22.

1066. Exceptions to the form of any order, decree or rule must be filed within four days after the same is entered of record, and a motion for its correction must be made within the same time, unless the court shall sooner rise, in which case it shall be made on the next motion day, or earlier, before the president judge at chambers, with such notice as he shall direct. 22.

### EXCEPTIONS AND CHARGE

[See Bill of Exceptions and Trial.]

### EXECUTION

[See also Sheriff's Sales and Deeds and §§ 436-444, 609, 610, 982, 1286 and 1559-1561.]

1067. It shall be the duty of the sheriff in levying upon personal property to make out and return with the writ a list of the several articles seized. 16, 42.

1068. The sheriff (or coroner, 36) shall, upon reasonable notice, deliver to the person requiring the same, at the proper cost of such person, a true copy of the inventory of the goods and chattels taken in execution. 18, 27, 28, 35, 36, 41.

1069. Whenever the president judge shall be absent from the district (or unable to act from sickness or other legal disqualification, 35) and a stay of proceedings in any writ of fieri facias or other writ for the sale of personal property is desired, it shall be the duty of the defendant in such writ, or some one in his behalf knowing the facts, to prepare an affidavit of defence to the whole or part of the plaintiff's claim, as the case may be,

in which affidavit shall be plainly and succinctly set forth the matters and things alleged in defence; and further, that unless a stay of proceedings be immediately had, irreparable injury will be done the defendant, which affidavit shall be filed in the prothonotary's office, and immediate notice thereof given to the plaintiff or his attorney of record. Whereupon it shall be the duty of the prothonotary to notify the sheriff, in writing, of the fact of such affidavit being filed, and that a rule to show cause why execution should not be stayed has been granted, and it shall be the duty of the sheriff to stay proceedings on such writ until such time as the president judge returns to the district: Provided, however, that the sheriff may, if required by the plaintiff or his attorney, proceed to make a formal levy on personal property, if the same be necessary to secure the same, and the stay of proceedings herein contemplated shall then only extend to postponing the day of sale to the time above described. In case property is under levy, the safe keeping of which will be a matter of expense, the defendant shall give security for the safe keeping and delivery of the same at the end of the said stay of proceedings; and in case perishable property is under levy, the defendant shall give security for the full value of the same before a stay shall be granted under this rule. Immediately on the return of the president judge to the district (restoration to health, etc. 35) application shall be duly made, on notice to plaintiff's attorney, for the discharge or continuance of such rule. 6, 35. This rule shall not apply if the Common Pleas is in session, presided over by the judge of another district, holding special court. 30.

1070. No execution will be stayed by the court, or a judge thereof, in vacation (or by the prothonotary in the absence of the judge, 13), upon the application of the defendant for the purpose of obtaining a rule to show cause why the judgment upon which the same issued should not be opened or set aside, until the attorney applying for the same has given reasonable notice (five hours, 21) (six hours, 29) in writing to the plaintiff or to his attorney, 12, 21, 29, 41 (if resident in the county, 17, 20, 25, 46, 47, 49) (if practicable, 11, 30, 37, 48), of the time and place where such application shall be made, 3, 5, 6, 8, 9, 19, 25, 27, 30, 33, 37, 43, 45, 46, 47, 48, 49 (together with a copy of the affidavit, 11) (and due proof of service of such notice

must be made before the judge, otherwise such rule will not be granted, 20) (nor until after the defendant shall give security to the sheriff for the forthcoming of the property levied upon, or, if no levy has been made, for the payment of the debt and costs in the event of the plaintiff recovering or sustaining judgment against him, 13): Provided, that such stay shall not take effect until filed in the prothonotary's office, 13, 45, and the costs first paid. 3, 41, 43.

1071. No order staying or suspending a writ of execution shall interfere with the right of plaintiff to have a levy taken and endorsed upon the writ, 17, 28, 30, 33, 35, 37, 48, 50 (unless the order shall direct the sheriff to return the execution without a levy, 45), unless a rule to show cause be granted and diligently prosecuted for decision at the next term of court. 41.

1072. In all cases where writs of execution are in the hands of the sheriff, and any application shall be made to stay the same, the party making such application shall give notice to the sheriff, or his attorney, when, where, and before whom such application will be made. 25, 51.

1073. On an application to stay execution, a hearing shall be appointed, with reasonable notice to the plaintiff or his attorney; and meantime, unless otherwise ordered, all proceedings shall be stayed: Provided, that when the plaintiff has no attorney, and resides more than one mile from the court house, proceedings may be stayed until further order, without notice. 22.

1074. The application shall be heard and decided on the affidavit on which it is founded, and nothing further shall be received, unless by consent or order of the judge, except matters of record and writings not disputed; but the affiant shall be required to attend and answer all questions on the part of the plaintiff relating to the matters in dispute. 22.

1075. Where a judgment is entered in vacation, the party against whom it is entered may apply to a judge to stay proceedings thereon, and if he can make out such a case as requires the interference of the court for his relief, the judge will order all proceedings to be stayed until the next term. 42.

1076. No motion to stay execution levied upon real estate shall be allowed after the sale has been advertised, except upon

condition that the defendant shall pay the costs already made on the execution, unless the defendant shall satisfactorily show that he could not have made the application before the sale was advertised by the exercise of reasonable diligence; and notice of the application in such case shall be given to the sheriff, as well as to the plaintiff, or his attorney, of the time and place where, and judge before whom, the intended application is to be made: Provided, however, that failure to pay the costs as aforesaid shall not be deemed to estop or debar the defendant from moving to set aside the sale according to the practice as at present understood and followed. 11.

1077. Notice to the sheriff to hold an inquisition on the premises must be given when notice of inquisition is served; or, if given afterwards, shall be in writing and served at least three days before the time fixed for holding the inquisition (if the lands lie beyond the county seat, and when in the town, twenty-four hours before, 28) or it shall be disregarded. 17, 28, 33, 35, 36, 50.

1078. When the sheriff serves notice of an inquisition to be held on real estate, levied on by virtue of a *fi. fa.*, he shall append to the notice the description of the property by which he intends to advertise it, and no notice to set aside the sale or to stay proceedings, grounded on misdescription of the advertisement, will be heard, unless such motion is made the first day the court sits after the service of such notice. 16. If the sheriff neglects to comply with this rule the sale will be set aside, or the necessary measures taken, at his costs. 42.

1079. Together with inquisitions taken to determine whether land shall be extended or not, the sheriff shall return a list of all the debts and sums of money (liens, 39, 42) exhibited to the inquest as liens upon the land, 8, 9, 10, 12, 16, 20, 21, 24, 25, 29, 39, 41, 42, 46, 47, 49, 51 (which list it shall be the duty of the plaintiff to present to the sheriff in writing, 4) and he shall also return with his writ a copy of the notice served on the defendant, stating the time and manner of service. 28, 33, 35.

1080. The sheriff shall give at least five days written or printed notice to the defendant and execution creditors of the time and place for holding the inquisition. 10, 20.

1081. If no exceptions (verified by affidavit, 30) be filed to an inquisition held by virtue of an execution levied upon

land within the first four days (three days, 4, 9, 12, 20, 24, 25, 47, 51,) (three days in term time and third day of term in vacation, 11, 13, 23, 34, 43, 44) (five days, 14) (during the first week, 29) (ten days after the taking of the inquisition, 21) (during the term, 22) of the term to which the inquisition is returned (it shall be considered as confirmed, 30, 34, 36, except where the defendant has not had the requisite notice, 6, 37, 48) the prothonotary shall endorse it "approved" without motion to the court. 4, 9, 11, 12, 13, 14, 16, 17, 19, 21, 22, 23, 24, 25, 26, 28, 29, 33, 34, 35, 39, 42, 43, 44, 45, 46, 47, 49, 50, 51.

1082. If exceptions be filed, the plaintiff may still proceed at his peril, but if the inquisition be set aside, he shall pay all costs subsequent to the filing of the exceptions. 36.

1083. Where the property has been extended, exceptions to the inquisition must be filed according to the preceding rules, otherwise they will be considered as waived and dismissed. 36.

1084. Where there is an inquisition and extension of real estate, under a fieri facias, and no application is made by a creditor for an order of distribution under the 4th section of the Act of 13th October, 1840, the defendant may pay to the plaintiff in the writ of fieri facias, or when more than one writ under which the extension was had, to the plaintiffs in such writs, in their order of lien, the semi-annual instalments (but no more, unless at his own risk) as they become due, taking receipts therefor. But when application is made by a creditor for distribution under that section, such payments shall cease, and the defendant thereafter shall pay according to the order of distribution, 4, in the manner prescribed by that section, and file his receipts in the proper cases. On failure to file the receipts he shall be liable for the costs occasioned by his neglect. 10, 18, 21, 28, 35.

1085. When an execution, partly or wholly executed, has been set aside as wrongfully issued, the court may award and order restitution, so far as practicable, to be made to the defendant, either of the property taken or money made by the sale thereof, yet so as not to disturb the title of an innocent purchaser at public sale. 6, 30, 37.

1086. When a writ of error shall have been issued, served and bail entered, within the three weeks to entitle a party to a

writ of restitution, but after execution fully executed, the money shall be stayed in the hands of the officer, upon notice to him, until the third day of the next term; before which time the party may apply for restitution, after reasonable notice to the plaintiff in the execution. But the court will not award restitution in any case unless satisfied of the undoubted sufficiency of the bail in error; or additional satisfactory security be given. 36.

1087. All executions issued upon præcipes filed on regular judgment days, prior to 4 P. M., shall be delivered to the sheriff together at one and the same time: Provided, that this rule shall not apply to executions issued upon judgments not entered or obtained on such day. 21.

1088. In all judgments in favor of building and loan associations, the plaintiff shall file with his præcipe for execution, a liquidation showing the amount claimed to be due from the defendant, verified by affidavit of the proper officer of the association. 47.

1089. No execution shall issue upon a judgment entered on a bond given to the treasurer of the county for the surplus money on sales of land for payment of taxes, until a scire facias be first issued thereon, at the suggestion and for the use of the party claiming such surplus, requiring the purchaser to show cause why execution should not issue in favor of the party at whose suggestion the writ issues. The scire facias thus issued shall be served and proceeded upon according to the practice in cases of scire facias to revive judgment *post annum et diem*, provided that no rule for an affidavit of defence shall be issued until after the party claimant shall have filed a full abstract of his title, and his right to receive the surplus, verified by oath or affirmation. 36.

1090. Where a scire facias to accounts for rents, issues and profits received from land, delivered on a writ of liberari facias, and to show cause why the defendant in the execution should not have his land again, is issued, it shall be the duty of the defendant in the scire facias, if the writ has been duly served, to file his account under oath within thirty days after the return day of the scire facias, or put in a proper plea. If at the end of that time no plea be entered or account filed, the plaintiff in the scire facias may apply to the prothonotary, and procure him to enter

judgment of restitution, upon which a writ of restitution may issue returnable to the next term. 16, 42.

1091. If the plaintiff in the scire facias alleges that the defendant has received more of the rents, issues and profits than was sufficient to pay off the debt, interest and costs due on the execution, after deducting and allowing the reasonable expense and labor of the defendant, he may at the time the judgment of restitution is entered, as above provided, have a rule on the defendant to file his account, on or before the first day of the next term, or in default thereof, show cause why an attachment should not issue against him. 16, 42.

1092. When the account of rents, issues and profits received as aforesaid is filed, and notice thereof is given to the defendant in the execution, he shall, within ten days after such notice, file his exceptions, or the account shall be allowed and confirmed of course. 16, 42.

#### EXECUTORS AND ADMINISTRATORS

[See Notices.]

#### EXEMPTION

[See also § 222.]

1093. In all cases in which, after process issued from any of these courts, the defendant shall be entitled to the benefit of the \$300 exemption law, and shall claim the same, it shall be the duty of the sheriff, at least forty-eight hours (twenty-four hours, 3) before causing the appraisement to be made, to notify the plaintiff's counsel by writing, of the time and place of such intended appraisement (and the names of the persons chosen to make the appraisement, 9, 41), at which time and place the plaintiff and his counsel, or some person deputed by them, shall have the right to be present. 1, 3, 20, 23.

1094. It shall be the duty of the sheriff to file all appraisements to debtors under the \$300 exemption law, on or before the return day of the execution, and the same shall be confirmed of course, unless exceptions be filed within five days (four days, 38) after the return of the writ. 7, 23, 38.

**EXPERTS**

[See also §§ 656 and 1471.]

1095. In (any pending case, 11) ejectments (where the whole of the plaintiff's survey is not disputed, in cases of interfering surveys, and in cases where there is a question whether the defendant is within the plaintiff's survey, 13, 20, 24, 25, 26, 34, 43, 44, 46, 47, 49) (in questions of boundary and interfering surveys, 6, 10, 14, 18, 30, 37) (in actions of trespass *quare clausum fregit*, and in all other actions affecting real estate, 8, 9, 12, 27, 28, 33, 35, 39, 41) either party may, on notice to the adverse party or his attorney (and on filing an undertaking to compensate him for his services, or where the application is by both parties, upon agreement that his reasonable charges shall be taxed as costs in the cause, 39), apply (*ex parte*, 36, 40, 42) to the court, or to a law judge thereof, for the appointment of an artist. The artist, after reasonable notice to the parties, and after being duly sworn to impartially and to the best of his skill and judgment, perform the duties assigned to him, shall proceed to make such examinations, surveys, measurements, calculations, and drafts as will truly exhibit the subject of dispute, 8, 9, 11, 17, 25, 27, 33, 34, and the interference, if any, 5 (and shall furnish an extra copy thereof to the court, 36, 40), and the draft or diagram may be given in evidence at the trial. 12, 13, 16, 20, 24, 26, 28, 30, 35, 36, 37, 39, 40, 41, 42, 43, 44, 46, 47, 49.

1096. In all actions of ejectment, and suits in which the possession or the working of mines, or the interference of leases of mines, may be involved, the attorney of either party may enter a rule on the opposite party, to show cause why one or more surveyors or mining engineers, employed by the party taking the rule, should not have permission, on giving notice to be prescribed by the court, to enter at all reasonable hours on the premises in controversy, with their instruments and assistants, in order to run the line of the tract or premises so claimed, to make survey of the mines, to ascertain the boundaries of the leases or mines, the manner of working the mines, or such other facts as may be in dispute. 14, 21.



**FEIGNED ISSUES**

[See Interpleaders and Sheriff's Interpleaders.]

**FOREIGN ATTACHMENT**

[See Attachments.]

**INCORPORATION**

[See Charters of Incorporation.]

**INQUISITIONS**

[See Assessment of Damages and Execution.]

**INSOLVENTS**

1097. The prothonotary shall keep an "Insolvent Docket," in which he shall enter the names of all applicants for the benefit of the insolvent laws, noting against the name of each the time of the original application to the judge, the time of filing the petition and schedule, and the period appointed for hearing when such period is fixed by the court, 11, 13, 22, 23, 26, 34, 44, and all continuances thereof and the date of the insolvent's discharge. 45.

1098. Continuances may be entered by the prothonotary from day to day during the term, and from term to term, in all cases where objections to such continuances are not noted on the docket by the directions of some person interested, on or before the first day of the term. 11, 13, 22, 23, 26, 34, 44.

1099. It shall be optional with the petitioner for the benefit of the insolvent laws to give either public or personal notice to his creditors. If personal notice be given, the proof of service of the same shall be filed at least three days before the day of hearing. 1.

1100. Every petitioner for the benefit of the insolvent laws in civil cases shall give at least fifteen days personal notice to the arresting creditor or his attorney, if resident in the county, of the time and place of hearing, 17, 28, 33, 35, 36, and to all others, including the arresting creditor if a non-resident, he shall give notice by publication. 18, 33, 50.

1101. (The notice of the time fixed for hearing required by Act of Assembly shall be given by the petitioner personally to his creditors, at least fifteen days (twenty-one days, 8) before the hearing, 2, 7, 11, 13, 16, 23, 25, 26, 38, 44, 45, 46, 49) or by publication in one (two, 1, 7, 16, 28, 35, 36, 38, 42) newspapers of the county for three weeks, 9, 12, 25, 34, 42, 51 (three times a week for two weeks, 1, 7, 38) (and in the legal newspaper, 1, 2, 19) (the first publication to be at least fifteen days (three weeks, 28, 35, 36) before the time fixed for hearing, 1, 2, 16, 17, 28, 35, 36, 38, 39, 42, 51 (before the first day of the term, 7) together with letters mailed and directed to any creditors residing out of the county at their last known place of residence, thirty days previous to the time appointed for the hearing. 4, 9, 11, 13, 16, 20, 22, 23, 24, 25, 26, 34, 39, 44, 45, 46, 49.

1102. In all notices the petitioner's occupation and place of abode shall be mentioned. 17, 18, 28, 33, 35, 36.

1103. Notices to the attorney of any party interested shall not be deemed sufficient. 16, 23, 39, 42.

1104. Where the insolvent has been convicted of fornication and bastardy, fifteen days notice in writing shall be given to the prosecutrix personally. 45.

1105. In criminal cases the petitioner shall, in addition to the advertisement provided for in civil cases, give fifteen days like personal notice to the commissioners of the county or their clerk, to the district attorney, and to the prosecutor in the case in which he has been sentenced, if resident in the county. 17, 18, 28, 33, 35, 36, 50.

1106. The time and place for hearing insolvent debtors shall be (the regular rule day of the term, at 10 A. M., 2, 11, 23) (the first Monday of each term, 17, 18, 28, 33, 35, 42, 50 (Saturday of the first week of the term at 10 A. M., 39) at the court house, 16, 39, 42, unless another time and place be specially fixed by the court or a judge thereof, 23, at which time the hearing may be continued from day to day, or to a certain time. 17, 18, 28, 33, 35, 50.

1107. Upon the application of petitioner for discharge, the evidence of publication of notice shall be a certificate from the prothonotary that notice was given according to these rules; the attorney in the case producing to the prothonotary the

newspapers in which the same was published in order that he may certify the same. 2.

1108. On petitions for the benefit of the insolvent laws, if opposition be made to the discharge of the applicant on the ground of an omission to comply with the requisites prescribed by the Act of Assembly, the counsel for the petitioner shall conclude the argument. If the opposition be founded on an allegation of fraud, collusion, or concealment, the opening and conclusion shall be with the creditors. 2.

1109. Objections to reports of trustees for the distribution of the estates of insolvent debtors under Section 26, Act 16th June, 1836, shall be filed on or before the fourth day of the term, after notice given (by the prothonotary, 11, 13, 26, 45) as required by said Act, and not afterwards. 4, 11, 13, 23, 26, 34, 44.

1110. All bonds entered for the temporary discharge of insolvent debtors, and approved by a judge or the prothonotary, shall be lodged with the prothonotary, 15, before the discharge shall be granted. And the prothonotary shall deliver them on application of the obligees, their agents or attorneys, taking receipts therefor. 11, 32, 45.

1111. Insolvent debtors shall be allowed forty cents (twenty cents, 9, 12) per day for their subsistence while in confinement, 7, 9, 38, if they have not property to support themselves; and the prothonotary is directed at the first regular term in each and every year to make this entry on the docket, unless ordered otherwise. 8, 12.

### INSPECTION OF DOCUMENTS

[See Books and Writings.]

### INSPECTORS

1112. Inspectors appointed by the court, or a judge thereof, to inquire into an alleged neglect or refusal of school directors to provide suitable accommodations for the children, under the Act of 6th June, 1893 (P. L. 330) shall give at least fifteen days notice of the time and place of hearing to the directors complained of, and to other persons concerned, by publication in

one newspaper of the county for two successive weeks before the hearing. 20.

1113. After the inspector shall have prepared his report, he shall notify in writing the attorney of each party in interest; exceptions thereto may be filed within ten days thereafter, and he shall thereupon reconsider his determinations and report finally to the court or judge appointing him, annexing the exceptions to his report, and giving notice of date of filing to the respective parties in interest or their attorneys. No exceptions to the report may be filed thereafter without leave of the court, or a judge thereof, for cause shown. 20.

1114. If the report is adverse to the petitioners, and exceptions be filed in accordance with the above rule, the cause shall be placed on the argument list. If the inspector reports that the directors have refused, neglected or failed, without valid cause, to provide suitable accommodations, etc., a rule will be issued upon them to show cause why they should not be removed from office, and if exceptions have been filed, counsel will be heard thereon at the argument of the rule. 20.

### INTERPLEADERS

[See also Sheriff's Interpleaders and § 577.]

1115. In all actions where the defendant is only a stakeholder, or holds property, effects or money not claimed by himself, but by another adversely to the plaintiff, or owes money or has to pay or deliver any sum or property which another than the plaintiff claims an interest in, or right to, on petition of the defendant, verified by affidavit, setting forth the facts, or such information as leads to a belief of them, a rule may be granted upon the party claiming adversely to the plaintiff, or believed to have an interest in or right to the property, effects, money, debt, or other demand, to appear at a certain day to show cause why he should not defend the action against the plaintiff's claim, and interplead to the same, or be forever barred thereafter from recovery against the defendant. 9, 10, 17, 21, 28, 33, 35, 36, 40, 41, 50.

1116. The rule shall be served at least ten days upon the claimant personally, or at his place of abode in the same manner as a summons, or if he has no residence in the county, by publi-

cation according to rule, or in such other manner as the court may specially order. If the claimant appear, but fail to show sufficient cause against the rule, it shall be made absolute, and he shall be ruled to plead as in other cases. The plea of the party thus interpleading shall be put in as a plea of the defendant in the action, and the trial proceed between the plaintiff and defendant as in other cases; and, if the issue in law or fact, or the plea of the party interpleading be found against him, he shall be liable for all costs accruing thereupon, and be ruled to pay the same. If the party ruled to appear and defend, after due service of the rule, fail to appear, he shall be deemed to have abandoned all claim, right or interest in the matter in controversy, and in the event of the plaintiff's recovery in the action, shall be forever barred thereafter from recovery against the defendant for the same matter. 9, 10, 17, 21, 28, 33, 35, 36, 40, 41, 50.

1117. A party claiming a right to or interest in any subject-matter in controversy in any action, may be permitted on petition setting forth the facts and verified by affidavit, to come in and interplead in the same manner and with the same effect as hereinbefore provided, 9, 10, 17, 20, 21, 28, 33, 35, 36, 40, 41, 50, in the case of a claimant of property levied upon. 4.

1118. In feigned issues it shall not be necessary to declare upon a wager, but in all such cases the pleading will be sufficient if substantially in the form provided for issues to be framed under the Sheriff's Interpleader Act. 9, 17, 27, 28, 35, 41, 50.

1119. In all issues to determine disputed facts, the pleadings shall consist of a statement filed by the plaintiff, alleging the existence of the facts which the issue is formed to try, and an answer in which the defendant shall either admit or deny the same. The general rules as to the time of pleading shall be applicable unless changed by the special order of the court. 18, 37.

1120. In all feigned issues, whether awarded originally in the Common Pleas, or certified from the Register, Register's Court, Orphans' Court, or the court sitting in equity, or upon issues raised before auditors or masters, the pleadings shall consist of a narr. or statement setting forth the facts that led to the formation of the issue and the plaintiff's claim to be adjudicated, to which the defendant shall file his answer, admitting, denying or avoiding all the material allegations in the

plaintiff's statement, and asserting the alleged rights and claims of the defendant, and to this the defendant may, by rule or motion, require a replication ; and the general rules of pleading as to time shall be applicable to feigned issues, except when changed by special order of the court. 6, 48.

1121. All feigned issues to be tried in the Common Pleas, shall be framed as upon a wager, unless otherwise directed by the court, and the general rules of pleading as to time shall be applicable thereto except when changed by special order of the court. 30.

1122. In lieu of the order that the pleadings shall be as upon a wager, the court may order that they shall consist of a plain statement of the facts that led to its formation, with an assertion of the plaintiff's statement or demand, to which the defendant shall file an answer thereto, which pleadings shall be filed of record within fifteen days after such order. 30.

1123. Feigned issues are hereby abolished and direct issues substituted ; in such issues no pleadings shall be allowed, but in the order or precept for the issue, the matters of fact in dispute shall be stated interrogatively, thus: What damages is the plaintiff entitled to? Do the goods in controversy belong to the claimant? Did the decedent make the alleged will? Was he of unsound mind? Was the alleged will procured by undue influence? or as the case may be. 3.

1124. When a petition for an interpleader is filed, and a rule granted, the court may, in their discretion, upon the application of any party in interest, order the money admitted by the petitioner to be in his hands, to be paid into court or invested in such securities as the court may designate, to await the result of the trial. 10.

1125. All issues awarded by, or certified to, the court for trial, shall be entered upon the appearance docket immediately after being ordered or certified, and when at issue shall be put upon the trial list as other causes, and at the request, in writing, of either party, before the list is made up, shall be placed at the head of the list in the order of their dates. 18.

### INVENTORIES

1126. All inventories of property assigned for the benefit of creditors, of estates of persons found by inquisition to be

lunatics or habitual drunkards, and in cases where estates are held in trust, over which this court has jurisdiction, shall be recorded, and the prothonotary shall be entitled to charge the same fees as are allowed for recording in other cases. 19.

### ISSUE LIST

[See Trial Lists.]

### JUDGMENTS

[See also Abandonment, Abatement, Assessment of Damages and §§ 28-32, 34-38, 40-64, 67, 75-77, 82, 85-87, 89-93, 96, 97, 99, 100, 147, 255, 257, 267-269, 271, 272, 292, 399, 481, 487, 488, 495-498, 510, 525, 538, 542, 573, 658, 749, 953-956, 958, 961, 970, 981, 1070, 1075, 1088, 1089, 1289, 1374, 1423, 1425, 1428-1435, 1440, 1474, 1522, 1523, 1547, 1549, 1550, 1559, 1608-1610, 1799 and 1854.]

1127. In all actions (personal and real, except ejectment, 5, 9, 10, 11, 17, 21, 24, 27, 28, 35, 40, 41, 47, and partition, 13, 15, 32) (personal, except replevin, 23, 39) (of summons and scire facias, 2, 4, 6, 7, 8, 12, 15, 20, 25, 29, 33, 36, 38, 42, 46, 49) judgment may be entered in the prothonotary's office, if there be no appearance for the defendant, on application of the plaintiff, or his counsel, at any time (one week, 7, 21, 38) after the return day (on or after the quarto die post, 4, 8, 12, 20, 22, 28, 30, 33, 36, 48) (on the first Saturday of the term, 2) if the process shall have been duly served ten days (fifteen days, 17) before the entry of such judgment, 10, 14, with like effect as if such judgment were entered in open court, 6, 7, 8, 15, 16, 18, 22, 24, 27, 28, 29, 30, 32, 35, 36, 37, 38, 40, 42, 48, (without reference to the quarto die post, 9, and irrespective of the fact as to whether or not the declaration be filed at the return day, 27, 41) if in cases where it is necessary, a statement or declaration has been filed on or before the return day. 2, 4, 9, 11, 17, 21, 25, 33, 47. When the process has not been served ten days before the return day, the plaintiff (if he has filed his statement, 42) may in like manner, during term time, direct judgment to be entered by default, ten days (five days, 46, 49) (fourteen days, 12, 51) after the date of service, if no appearance has been entered for the defendant, 4, 11, 13, 16, 20, 22, 23, 39, 42, 43,

45, 46, 49: Provided, the said writ has been issued ten days before the return day. 12, 51.

1128. Writs of sci. fa. sur mechanic's claims must be served fifteen days before the return day to entitle plaintiff to judgment for want of an appearance. 24.

1129. No judgment shall be entered before the writ and return of service are filed and noted. 28, 35.

1130. When suit is commenced by capias, and the defendant has given bond to the sheriff under the 9th and 10th sections of the Act of 13th June, 1836, if no appearance has been entered on the record, judgment by default may be obtained at the same time, and in the same manner, as if the suit had been commenced by summons. 16, 42.

1131. In all cases where a summons or scire facias is returnable to, and shall have been served ten days before a monthly return day, not in term time, and the plaintiff shall have filed his declaration or statement on or before said return day, if any is necessary, the plaintiff may take judgment for want of an appearance, or if an appearance is entered he shall be entitled to the defendant's plea at the next or any subsequent return day, or any Friday in term time, and also to an affidavit of defence, when such affidavit is now required by the rules; and in default of such plea or affidavit the plaintiff may take judgment to be entered of course, the amount to be ascertained by the prothonotary: Provided, that no judgment shall be taken for want of a plea or affidavit of defence on any return day under this rule, unless the return day of the writ shall have been at least four weeks previous thereto. And provided further, that such judgment may be taken in court, or in the prothonotary's office, on any day subsequent to the day upon which such appearance, plea or affidavit of defence is required by this rule. 34.

1132. If judgment by default has been entered for want of an appearance, it may be taken off by the prothonotary any time within four weeks from the time the process was returnable, on application of any attorney of this court, and on affidavit by him that he had been retained in the suit before or during the week allowed for an appearance. 7, 38.

1133. The judgment for want of an appearance may be opened within the same term on application supported by an



affidavit of a just and legal defence to the demand of the plaintiff. 13.

1134. If the declaration was not filed before the return day, and the defendant has failed to appear, the plaintiff may enter a common appearance for him in this form :

County, to wit: Appearance for C. D.,  
the defendant, at the suit of A. B., to a summons in No. , of  
Term, 18 , returnable on, etc.

E. F., plaintiff's attorney.

And thereupon the plaintiff having filed his declaration, may rule the defendant to file an affidavit of defence, or to plead, or both. And upon proof that the defendant has removed from the county, or cannot be found, and that in consequence he cannot be served with the rule, the plaintiff may have judgment on motion in court at any subsequent day in term. 39.

1135. Counsel shall enter all appearances and pleas, in cases in which they are employed, in the office of the prothonotary, before 10 A. M. on the days on which judgments are to be taken in open court for want of pleas and appearance. 2.

1136. In all cases of appeals from the judgments of justices of the peace, the appellant may direct judgment to be entered by default, if there be no appearance for the appellee on or before the first day of the term ensuing that to which the appeal was taken: Provided, he has given the appellee at least ten days notice of the filing of such appeal. 13.

1137. In all cases where an appearance is entered for defendant, plaintiff may have judgment entered by default (in open court, on the Saturday after the first day of the term next succeeding that to which the process is returned, 2) (at the expiration of 15 days, 14), if there be no plea to the action previously entered, and a declaration be filed on or before the return day of the writ, 2: Provided, that the court, if in session, or a law judge in vacation, may, upon sufficient reason shown, extend the time. 14.

1138. In all cases where rules have been taken, the failure to comply with which entitles a party to a judgment, the prothonotary shall enter judgment on the application of such party (upon præcipe, with the same effect as if moved for in open

court, 10, 14, 22, 25): Provided, an affidavit be filed of the due service of a notice of such rule, 5, 6, 7, 11, 15, 16, 18, 19, 23, 27, 32, 34, 38, 39, 41, 42, 44, 48, and of the nature of the default. 9, 14, 40.

1139. Whenever a verdict in a civil action or cause is taken, judgment shall be entered immediately thereon nisi, and if no motion in arrest of judgment be filed within four days, judgment shall be entered thereon absolutely by the prothonotary: Provided, that before any such judgment shall be entered absolutely, the plaintiff or defendant for whom said verdict shall be given, shall file with the prothonotary the receipt of the sheriff for the jury fee required by law. 21.

1140. No judgment shall be entered on a verdict in any case, without the special order of the court (within the time allowed for motions in arrest of judgment and for new trials, nor, 7, 17, 19, 23, 28, 33, 35, 36, 38, 39) unless the jury fee of \$4 be first paid as required by Act of 29th of March, 1805, 1, 2, 3, 4, 5, 6, 7, 11, 14, 15, 16, 17, 19, 20, 23, 24, 25, 27, 28, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 (and the receipt of the sheriff therefor filed with the prothonotary, 18, 22, 37) and if the same be not paid within ten days after verdict rendered (unless when the judgment is arrested or suspended) an attachment will issue at the instance of the commissioners of the county, against the successful party, to compel the payment of the jury fee. 8, 12, 26, 29, 51.

1141. Judgment on a verdict, when the party's right to it is perfected, shall be entered by the prothonotary as of course, and shall be dated on the day it is entered, 1, 2, 4, 9, 10, 11, 14, 20, 23, 25, 27, 33, 34, 36, 40, 43, 44, 46, 47, 49, 50, but no judgment shall be entered out of court except on notice to the opposite party or his attorney. 16, 42.

1142. No final judgment shall be entered on any verdict or reserved question until notice of intention to enter, stating the time thereof, shall have been served upon the attorney of record for the party against whom the judgment has been obtained, and proof thereof made to the prothonotary and filed in the case. 17.

1143. In all judgments taken on the verdict of a jury, or entered on reserved points, and in all decrees of the court entered on contested matters, entered more than thirty days after

the rendition of such verdict, or argument in such controverted matter, it shall be the duty of the prothonotary to notify the counsel of both parties of the entry of such judgment or decree. 24.

1144. Judgment may be entered by the prothonotary, on the præcipe of the proper party, in the following cases: For want of an appearance, declaration, statement, answer, answers to interrogatories, plea, or default of any kind, 6, also, for so much of the plaintiff's demand as is admitted by the answer, or by the answers to interrogatories. 3.

1145. Judgment on two returns of nihil habet may be entered according to the present practice, on a scire facias post annum et diem, on a mortgage, and in other cases of scire facias, where the manner of service of the writ is not especially prescribed by the Act of Assembly. 16, 42.

1146. No judgment shall be entered on two returns of nihil habet if the second writ has been made returnable to the same term as the first. 24.

1147. Judgment on two returns of nihil habet must be moved for in open court, on a regular motion day. 18.

1148. No judgment by confession shall be entered in any amicable suit, unless there be filed, at the time of filing the agreement, a specific statement of the cause of action signed by the parties, or their attorneys (and where such statement is signed by the attorney of the defendant, there shall also be filed with the same the warrant of attorney, 1, 20, 23) but this rule shall not apply to judgments on warrants of attorney, or to revivals of judgments by agreement, 1, 8, 20, 23, or to confessions of judgment, or written powers to confess judgment. 11, 45.

1149. No judgment shall be entered by confession of attorney where the attorney's name does not appear on the list of practising attorneys kept by the prothonotary. 17.

1150. In cases where judgment is confessed by warrant of attorney, the instrument of writing upon which the warrant is founded, together with the warrant (or a true copy thereof verified by affidavit, 6, 30, 48) shall be filed with the confession, 5, 6, 10, 14, 16, 17, 23, 28, 30, 33, 35, 48, 50 (unless the court or a law judge thereof, shall, upon cause shown, permit a copy to be filed in lieu thereof, 37): Provided, that where the said note or

bond is payable at a particular place, and judgment is confessed thereon, prior to the maturity of the obligation, the original note or bond need not be filed with the confession, but, in lieu thereof, the attorney confessing judgment thereon, shall certify a correct copy thereof, which shall be substituted for the original. 47.

1151. Where the warrant of attorney constitutes an integral part of a lease, or other original contract, from which it cannot be separated without injury, it shall be sufficient to file a copy of the lease or contract, 1, 20, the correctness of which copy is to be attested by an agreement of the parties or their attorneys annexed thereto, or by the prothonotary or his deputy, from inspection of the original, upon the paper filed. 23.

1152. If a warrant of attorney, or written power to enter or confess judgment, be above ten and under twenty years old, the court or a judge thereof must be moved for leave to enter judgment, which motion must be founded upon an affidavit of the due execution of the warrant or written power, and that the money is unpaid and the parties living. 4, 50. But if the warrant or written power be above twenty years old, there must be a rule to show cause served upon the party, if within the State, 1, 2, 3, 8, 10, 12, 13, 16, 17, 19, 20, 21, 22, 24, 25, 27, 28, 32, 33, 34, 35, 36, 40, 41, 42, 43, 44, 45, 46, 47, 49, 51 (county, 7, 9, 15, 39) (or an affidavit filed that his residence is unknown, 6, 18, 30, 37, 48) (or if without the State, notice of the rule must be published (as the court shall direct, 7, 29, 38) for three weeks (in one newspaper of general circulation in the county, 14, 23) (in the paper designated by the court for the publication of legal notices. 11). If upon hearing the court shall be satisfied that he cannot be found after reasonable search, judgment shall be entered thereon. 5.

1153. No judgment shall be entered by confession on a warrant of attorney where the warrant is over twenty years old. 50.

1154. When judgment has been entered on narr upon an instrument with warrant of attorney to confess judgment, if the defendant desires to have such instrument and warrant filed, he may file with the prothonotary a request in writing to that effect, and serve notice thereof upon the plaintiff or his attorney, and upon failure to file the said instrument and warrant, within

four days after the time of such service, the court or judge in vacation, in the absence of satisfactory reasons for such failure, may make such order respecting such judgment, or any process founded thereon, as the nature and justice of the case may require. 40.

1155. No attorney shall confess judgment upon any instrument of writing, on a power of attorney contained therein, without having the original instrument in his possession at the time of entering judgment thereon. 18.

1156. No judgment shall be entered on a scire facias sur mechanic's claim, unless legal service has been made upon all the owners named in the claim. 28, 35.

1157. In actions of ejectment, judgment shall not be taken before the second term, 10, 11, 22, 34, 47, nor without proof of service. 4, 25, 46, 49.

1158. In ejectment, if the defendant, having been duly served, shall not appear at the second term, the plaintiff, on motion and affidavit, may have judgment by default, pursuant to Sec. 2, Act. 13th April, 1807, 36, or the court may direct a plea to be entered for the defendant, where the writ has been duly served on the party claiming title, according to Sec. 1, Act 5th December, 1860. 16, 23, 39.

1159. In all real actions except ejectment, judgment for default of appearance, pursuant to the 87th Section of the Act of 13th June, 1836, may be entered in term time, on motion in writing after the fourth day of the term to which the writ is returnable, or the third day of the second return day, as the case may be: Provided, the writ has been duly served, or published, when publication is necessary, the length of time prescribed by law,—and that the plaintiff has filed his declaration or statement as required or allowed by law,—and in case of minors, that there is a guardian on whom the writ has been duly served, or that one has been duly appointed ad litem who has had due notice of the writ. 36.

1160. On scire facias to revive judgment (against real estate, 42), if the defendant does not appear, having been duly served, judgment may be obtained at the second term subsequent to the issuing of the writ, pursuant to Sec. 3, Act 4th April, 1798, 23, 39, but if the defendant cannot be found, the plaintiff may take judgment by proclamation at two succeeding terms of

the court according to the provisions of the third section of the Act. 16, 42.

1161. If the plaintiff file a statement in pursuance of the Act of 21st March, 1806, judgment by default may be entered at the time prescribed by that Act, but at no other time except in pursuance of the rule. 36, 40.

1162. No judgment (except such as may be entered by confession, or by virtue of a warrant of attorney or written power to confess judgment) shall be entered in any case, unless when it is otherwise expressly authorized by these rules, or some of them, or on motion day in open court. 25, 46, 49.

1163. In cases where suits have been marked discontinued or settled, and the costs have not been paid, the prothonotary may enter judgment against the plaintiff as in case of non suit, 11, 22, 23, 24, 34, 44, 45, and issue execution for such costs, without præcipe. 5, 6, 9, 10, 14, 17, 18, 27, 28, 30, 33, 35, 36, 37, 40, 41.

1164. Judgment by default of any kind may be moved before and entered by the prothonotary, 18, who shall assess the damages in all cases in which the amount thereof is set forth with certainty in the statement of claim filed, 1, 5, 6, 22, 23, 26, 28, 32, 35, but no such judgment shall be entered unless the statement is in accordance with the rules regulating the same. 8, 9.

1165. In all cases where a party is entitled by law or by these rules to judgment by default, except in cases where a motion in open court is specially required, he may move for judgment before the prothonotary by entry on the rule book, and the court shall be considered always open for that purpose, and the prothonotary shall mark the motion granted of course, and enter the judgment accordingly. The entry on the rule book may be made by the prothonotary when duly authorized in writing. 37.

1166. All judgments by default shall be taken on motion in open court (unless otherwise specially authorized by Act of Assembly or order or rule of court) and shall be moved for on the coming in of court on Thursday afternoons when the court is for one week, and on Monday afternoons of the second week when the term is for two weeks, and at no other time unless forty-eight hours notice in writing is given to the party against

whom judgment is moved, or to his attorney of record, specifying when and for what cause judgment is moved. 4, 48.

1167. At the times specified for taking judgments each attorney shall bring into court a list of the causes in which he intends to move for judgment, giving the names of the parties, the number and term of the cause, and docket and page where entered, and the name of the attorney for the defendant (if an appearance shall have been entered). And upon his name being called by the prothonotary from a list of the attorneys to be prepared by him, shall move for judgment in said cases, which shall be granted unless an appearance or plea shall have been entered, or an affidavit of defence filed, as the case may be. 4.

1168. Judgments may be moved for at the several adjourned courts, to be held on the first Monday of months intermediate the regular terms. 4.

1169. Whenever judgment of non pros, or by default, or a discontinuance, has been entered in pursuance of rules, no motion to take off the judgment or strike out the discontinuance will be received, unless founded upon affidavit of a good cause of action or defence, as the case may be, and of the reasons of the party's default or omission; and in taking off the judgment or discontinuance, it shall be on payment of all costs accrued, or on such other terms as the court may order. 18.

1170. Upon application to open judgment, setting forth matter sufficient, a rule nisi will be granted, on the hearing of which evidence may be offered by both parties. If the rule be made absolute an issue shall be directed, and the cause shall thereupon be subject to all the rules relating to causes pending. In forming the issue, the plaintiff shall declare on the instrument on which judgment was entered, and the defendant shall enter such plea as shall be proper upon the matter of defence set forth in the application to open, or the terms on which the judgment is opened. 22.

1171. Except in peculiar cases, application to open a judgment by default (or take off a non pros, 42) will not be allowed if a trial has been lost by the delay, 16, but if promptly made, and it is necessary for the purposes of justice, relief will be granted. 42.

1172. The court will, upon motion, and rule to show cause, supported by depositions, take off a judgment of non pros, or

open a judgment by default or confession, where the purposes of justice are shown to require it, 1, 13, 19, 20, 26, 36, 51, and the application is made with reasonable promptness, imposing terms in cases proper for such order. 8, 12, 28, 29, 35, 36, 40, 43. But if the affidavit or proof does not cover the whole amount of the judgment, it will be opened only as to the part covered thereby (with leave to plaintiff to proceed for the residue, 16, 23, 39), and the court may make the payment of the amount due a condition precedent to opening the judgment, or may, in their discretion, allow execution to proceed for the undisputed part of the judgment, 16, or stay proceedings at their discretion. 42.

1173. Applications to open judgments for default may be made before a law judge at chambers, and upon sufficient cause shown a rule may be granted by him to show cause, returnable to the court in session, which must be served upon the plaintiff, or his attorney, at least ten days before the time of hearing. 6, 18, 30, 37.

1174. When a judgment is entered by default, or in vacation in pursuance of rules, or when entered on a warrant of attorney or power to enter judgment, the judge in vacation—on affidavit of a just and legal defence, and a certificate of counsel subjoined thereto, that he “verily believes the grounds of defence are sufficient in law, and are not made for the purpose of delay”—may stay all proceedings on reasonable terms until the next meeting of the court. But no such order shall be made unless reasonable notice of the application be given to the adverse party or his attorney. 14, 36, 40, 41. When an execution is issued and levy made on personal property, and in case of levy on real estate on a judgment containing a waiver of inquisition, during the illness or absence from the county of the judge, the duty herein prescribed shall be performed by the prothonotary, subject, however, to the after approval or otherwise of the judge, if required by either party. 27.

1175. Applications to open judgments for default shall be accompanied by an answer to the complaint in cases where an answer is required; in other cases the petition shall disclose the nature and character of the defence as fully as in an answer. 3.

1176. If a case is reached on the call of the trial list which



counsel state to have been settled, the court will enter a formal judgment for the costs, if there be an agreement to that effect. If there be no agreement, judgment of non pros will be entered, 9, 27, 41, or such other order made as in the discretion of the court shall be deemed proper. 7.

1177. When a judgment nisi is entered by consent of counsel, the construction shall be that it shall become absolute unless an affidavit of defence is filed within thirty days thereafter. 42.

### JUDGMENTS BY DEFAULT

[See Abandonment, Abatement and Judgments.]

### JUDGMENTS NON OBSTANTE VEREDICTO

[See New Trials and Arrest of Judgments.]

### JURY

[See also Condemnation Proceedings and §§ 209, 218, 219, 655 and 1853.]

1178. A general venire facias shall serve for all the causes intended to be tried by the common traverse jury; but in cases of special juries, a particular venire facias shall be issued in each case. 7.

1179. The number of persons to be drawn, summoned and returned as traverse jurors for each week of the court shall be (forty-eight, 4, 7, 9, 11, 20, 25, 38, 41, 50 for the first week and thirty-six for later weeks, 4, 25, 26, 29, 33, 40) (thirty-eight 16, 18, 28, 35, 36, 42) (thirty-nine, 39) (thirty-six, 8, 12, 51) (unless otherwise specially ordered by the court, 4, 7, 12, 20, 26, 51), and where the term extends for more than one week a separate list of civil issues, and separate venires for jurors, shall issue for each week. 8, 9, 12, 16, 18, 25, 26, 28, 35, 36, 40, 41, 51.

1180. It shall be the duty of the sheriff, or other officer who shall summon any jurors (on or before the first court day of each week, 6, 37, 48) to make a minute or memorandum on the panel (and an affidavit, 6, 11, 20, 34, 37, 44, 45, 46, 48, 49) of the time and manner of summoning each juror (and subscribe the same, 40, and make return thereof to the court, 6, 11, 20, 25,

34, 37, 44, 46, 48, 49 (and to attend with it in court on the return day of the process to make proof of service on defaulting jurors, 16, 18, 28, 33, 35, 36, 40, 42, 45) and this shall be taken as prima facie proof of service on any defaulting juror. 10.

1181. When jurors are fined for non-attendance during a term or on failure to answer when specially called, a rule shall be entered by the prothonotary on them to show cause at the next term why the fine should not be levied, 4, the service of which must be at least ten days before the term, 40: Provided, that the rule shall not be issued until four weeks after the fine is laid, to give them an opportunity of coming into court or the clerk's office without service, and filing their excuses, under oath or affirmation, of reasonable cause of absence. Tales jurors are subject to the same rule. 18, 28, 33, 35, 36.

1182. It shall be the duty of the clerk to call the list of jurors every morning upon the opening of the court. And jurors failing to answer, or failing to answer when called in empaneling a jury, shall be deprived of the pay for that day, and be subject to a fine, in the discretion of the court. The clerk is directed to note the attendance of jurors daily and enforce these rules, 4, unless the juror is excused by the court. 29.

1183. The sheriff shall not be allowed his fees for summoning a juror unless the service is made in the manner required by law by the sheriff himself, or some regular deputy, who attends in court on the return day of the venire to prove the service, if necessary, and if the panel is set aside for irregularity of service it shall be at the cost of the sheriff. 16.

1184. As a standing order of court, the number of sober, intelligent and judicious persons liable to serve as jurors in the several courts of this county during each year shall be six hundred, and the names of that number of such persons shall be selected and placed in the jury wheel a sufficient length of time before the first term of the court in every year as required by law. 40.

1185. It shall be a standing order of this court to be considered as made at every term immediately preceding a term of two weeks (pursuant to the 33rd and 104th sections of the Act of 14th April, 1834) that the trial of issues in civil cases shall

be commenced during the first week of the two weeks term ; and the venire for jurors therefor for the first week of the term shall be issued and made returnable accordingly, in the same manner as provided for a term of one week ; and the sheriff and jury commissioners shall annex and return one and the same panel of names to all the venires for petit jurors, for the first week of the term, 40, as directed in the 34th and 121st sections of said Act. 36.

1186. The prothonotary shall, as soon as conveniently may be after the trial list has been made out for any regular term, adjourned court or special court, and at least thirty days before the beginning thereof, issue to the sheriff a writ of venire for the trial of the issues upon the list, according to the provisions of the 96th, 97th, 98th and 107th sections of the Act of 14th April, 1834. 36.

1187. The prothonotary shall endorse upon every writ of venire facias which shall be specially awarded in any cause, the day assigned in the trial list for the trial of the said cause. 1, 8.

1188. The sheriff or other officer to whom any writ of venire facias specially awarded in any cause shall be directed, shall summon the jury to appear in court at 10 A. M. (1 P. M., 50), of the day so endorsed on the said writ. 1, 8, 50.

1189. Every challenge to the array of jurors returned for the trial of any issue of fact shall be made on the first day of the period (week, 45), at which the said issue shall be set down for trial. 1, 7, 8, 11, 45.

1190. The prothonotary shall cause a list of jurors, in each cause set down for trial by jury, to be delivered to the attorney on each side (when requested, 1) at least eight days before the time of striking, and he shall subjoin thereto a notice of the time and place of striking the same. The notice of the prothonotary shall be considered as entitling the plaintiff or defendant to strike the same, ex parte, at the time appointed without further notice : Provided, that the striking of a jury is not to be considered as entitling either party to a trial if not otherwise entitled. 26.

1191. A rule for a struck jury, or a special jury of view, will be granted on motion, in open court, with notice to the opposite party, or his attorney of record, and cause shown (by

affidavit. 11). If allowed, at least five days notice of the day and hour of striking the jury at the prothonotary's office shall be given to the adverse party or his counsel, together with a copy of the jury list drawn for the next ensuing term. If both parties attend at the time appointed as aforesaid, they shall strike alternately, the plaintiff commencing; or either party may decline striking, and thereupon the party attending may strike ex parte any number: Provided, in all cases, the number remaining on the list shall be at least twenty. 11, 23, 45.

1192. A rule for a special or struck jury shall, unless the parties agree to join therein (and rules for views, 18, 28, 35, 36, 45) be granted only on cause shown (by affidavit to the satisfaction of the court, or a judge in vacation, and, when taken out of term time, on notice to the opposite party or his attorney, of the application therefor, 8, 12, 14, 26, 51), but no rule shall be granted at the instance of the defendant, unless he also file an affidavit of a just and lawful defence to the plaintiff's cause of action, or some part thereof, 9, 42; and, provided, when the case is on the trial list, the rule be applied for in due season, so as to give notice, and strike the same before the term, and so as not to delay the trial. 18, 19, 28, 33, 35, 36, 41.

1193. Rules for a special jury, or special jury and view, or for a view to be taken from the panel when the case is called for trial, may be entered in the prothonotary's office. 7, 38. Rules for views to be taken from the panel shall be returnable on the day on which the list is called, and five days notice thereof shall be given. 15

1194. The party obtaining the rule, or either party where they join, shall apply to the prothonotary, who shall at some period after the general panel for the term has been drawn, and the list of jurors put up in his office, fix the time by written notice, of which a copy shall be served on the adverse party or his attorney, at least five days (four days, 39) before the striking. At the time appointed the parties, beginning with the plaintiff, shall strike alternately from the panel until the number is reduced to eighteen (fifteen, 15) (twenty. 14, 16). (If the party against whom the rule is taken does not attend or refuses to strike, the prothonotary shall strike for him. 14, 16, 18, 19, 28, 33, 35, 36, 37, 42.) Parties may, however, agree in writing that the number remaining on the list shall be twelve, and

that in case of view the trial shall be had before the viewers only. 15.

1195. When a rule for a special jury is obtained, either party may give at least ten days (five days, 9, 41) notice to the opposite party, his agent or attorney (with a copy of the jury list, 32) to appear at a particular day and hour, to strike the list of jurors, and if the parties appear at the time appointed they shall strike from the general list until the number of (twelve, 8, 9, 12, 41, 51) (fifteen, 32) (eighteen, 7, 38) (twenty-four, 20, 26, 29) is left; and in case only one of the parties attend at the time and place appointed, upon due proof of the service of such notice, the prothonotary may also strike for the absent party, 7, 9, 38, 41: Provided always, the parties may strike by agreement without such previous notice, barring such number as they think proper. 8, 12, 20, 26, 29, 32, 51.

1196. No jury shall be struck after the commencement of the term at which the cause is to be tried. 14.

1197. A rule to strike a special jury may be entered of course, 32, and when entered twenty days (ten days, 45) notice shall be given to the opposite party, or his attorney, at the time of striking the jury. 27, 43, 45.

1198. If the parties appear they may strike respectively any number not exceeding twelve names from the general panel, and the prothonotary shall then draw twelve names from the residue, who shall constitute the jury. If either party fails to appear, the opposite party may proceed ex parte. 27, 43, 45.

1199. When a party has obtained an order for a struck jury, or a view, it shall continue in force from term to term, although a jury was struck in pursuance of it, 9, 18, if the cause was not tried, or a new trial granted. 11, 16, 19, 23, 28, 33, 35, 36, 39, 41, 42.

1200. The party who obtains a rule for a special jury must deposit with the prothonotary, before the order to the sheriff issues, the sum of sixty dollars, to be applied, or so much thereof as may be necessary, by the prothonotary, to the payment of the fees and mileage of the sheriff and jury. The costs of such view to be taxed and paid as other costs of the case. 15.

1201. The party applying for a view shall advance the expenses thereof, and if the opposite party loses the cause he shall reimburse the same, 14, 27, 43: Provided, it appear satis-

factorily to the court that such view was necessary. 8, 12, 20, 21, 26, 51.

1202. Special jurors shall be called into the box by ballot, except when there may have been a view, when the viewers shall be first called, and the panel shall be filled by ballot. 7, 15, 32, 38.

1203. A special venire shall be issued for the view, and the view shall be held and the viewers called and sworn as provided in the 124th, 158th and 159th sections of the Act of 14th April, 1834. 18, 28, 33, 35, 36.

1204. No jury of view shall be had, except by special order of the court, and only when in its opinion the circumstances of the case require it. 30.

1205. The court may order a view whenever in its opinion the circumstances of the case require it. 6, 37, 48.

1206. The sheriff shall give at least five days (three days, 12, 20, 21, 26, 51) (ten days, 8) notice of the time and place of holding the view to the parties, their agents or attorneys of record. 8, 12, 14, 19, 21, 26, 27, 43, 51.

1207. A motion for a view must be founded upon affidavit setting forth the particular circumstances which render it necessary, unless the propriety of granting it appears on the face of the pleadings, 16, 19, or when boundaries are in question in ejectment. 6, 30, 37, 48.

1208. The jury of view must be asked for on the first day of taking up the civil list for each term; whereupon the jury shall be balloted for to try the cause, six of whom shall view the premises in the presence of an officer of the court before the trial, 5, and if necessary by an artist appointed by the court, 6, 37, 48, who shall be sworn to the faithful performance of his duty in the premises. 30.

1209. Neglect of the party obtaining a rule, in using due diligence to have the jury struck, or the view made, shall not prevent the other party going to trial by the common jury. 4, 7, 8, 9, 11, 12, 14, 15, 16, 18, 19, 20, 21, 26, 27, 28, 29, 32, 33, 35, 36, 38, 39, 41, 42, 45, 51.

1210. If from any cause twelve of the special jurors do not answer when called, or by reason of challenges for cause are rejected, the case shall not for that reason be continued, but

the jury shall be filled out from the rest of the panel in the usual way. 14, 18, 28, 33, 35, 36.

1211. No trial shall be put off on account of a view not having been had by six of the first twelve of the jurors as they stand in the panel, provided that any (six, 20, 23, 26, 28, 33, 35, 36, 39, 43, 45) (eight, 19) of them shall have viewed and some of the (six, 19) viewers do appear to try the cause, 18, and those of them who have viewed and appear shall be first sworn or affirmed on the trial, 8, 12, 14, 16, 20, 21, 23, 26, 27, 28, 33, 35, 36, 39, 43, 45, 51 ; and it is ordered that the form of the venire facias shall be made accordingly. 40, 42.

1212. When any cause shall be ready for trial, the first twelve jurors called and answering shall be taken to be satisfactory to the parties, unless either party promptly requests that twenty jurors be called. 10.

1213. After special jury has been struck, it shall be considered on both sides as a waiver of all peremptory challenges, except when, from any defect of special jurors, the jury shall be filled out from the rest of the panel, in which case the peremptory challenges to jurors called to fill the number shall be according to law. 18, 28, 33, 35, 36.

### LAW LIBRARY

[See also §388.]

1214. The library shall be open at all times for the use of the judges of the court and gentlemen of the bar of this county, 9, 39, who alone shall use the library room. 41.

1215. Books shall not be taken from the law library except to be used on a trial or argument proceeding in court. 9, 39, 41.

1216. The books contained in the law library of the respective counties are exclusively for the use of the members of the bar thereof, and no persons shall at any time remove any book from said libraries unless for use in court, except by permission of the Law Library Committee. Any attorney violating this rule shall pay to the Law Library Committee for each book so removed the sum of one dollar, to be ordered paid by the court on report of such violation by the Law Library Committee. 43.

1217. At the first session of the court in each year, the committee on the law library shall file a statement showing the items of receipt and disbursement for the preceding year, and the balance on hand. 39.

1218. The court shall appoint annually a member of the bar to act as librarian, whose duty it shall be to take charge of the court library, and collect all fines and other moneys directed by Act of Assembly, or by the court, to be appropriated to the library fund. 27.

1219. The librarian shall also, from time to time, with the moneys so collected, make such purchases of books for the library as the law judge may direct, and shall, at least once a year, make report to the court of the amount of moneys received by him, stating the sources from which it was received, and how the same has been expended, which report shall be filed with the prothonotary; and for services rendered by the librarian he may retain ten per cent. of all moneys collected by him. 27.

## LEGAL NOTICES

[See Notices.]

## LETTERS ROGATORY

1220. Letters rogatory may issue on application of either party to take depositions, which letters rogatory shall be in the form following, viz.:

“The Court of Common Pleas No. , for the County of  
 , Pennsylvania.

“To any judge or tribunal having jurisdiction of civil  
causes at ———

“Whereas a certain suit is pending before us, in which A. B. is plaintiff and C. D. is defendant, and it has been suggested to us that there are witnesses residing within your jurisdiction, without whose testimony justice cannot completely be done between the said parties; we therefore request you that, in furtherance of justice, you will, by the proper and usual process of your court, cause such witness or witnesses as shall be named or pointed out to you by the said parties, or either of them, to appear before you or some competent person by you for that



purpose to be appointed and authorized, at a precise time and place by you to be fixed, and there to answer on their oaths and affirmations, to the several interrogatories hereunto annexed; and that you will cause their depositions to be committed to writing, and returned to us under cover duly closed and sealed up, together with these presents; and we shall be ready and willing to do the same for you in a similar case when required. Witness, etc." 1, 8, 9, 16, 20, 23, 41, 42, 47.

### LIBERARI FACIAS

[See Execution.]

### LUNATICS AND HABITUAL DRUNKARDS

[See also § 769.]

1221. In all cases where commissioners appointed under the sixth section of the Act of April 20th, 1869, to inquire into the alleged lunacy of any person, shall report that the case is a suitable one for confinement, the commission shall also inquire and report whether the lunatic has sufficient real or personal property to pay the costs, including the compensation of the commissioners fixed by the Act of May 8th, 1889. If the evidence shall show that the lunatic has not sufficient real or personal property to pay the costs and fees of the commissioners, the commission shall also report said fact. 7.

1222. The report of the commission shall be verified by the affidavit of the commissioners. 7.

1223. It shall be the duty of the officer in whose office the report shall be filed, in all cases where it shall state that said lunatic is not possessed of property as aforesaid, to give written or printed notice of said report to the counsel of the Board of County Commissioners within two days after the same shall be filed; and if no exceptions be filed thereto against the finding in relation to property, within ten days thereafter, he shall present the report to the court or judge, accompanied with a certificate ready prepared for the signature of the judge, in due form under the Act of May 8th, 1889: Provided, the committing order may be signed at any time after the report, stating that the person is insane, is made. 7.

1224. When exceptions shall be filed to a report as aforesaid, the same shall be heard upon depositions, to be taken upon six days notice to the adverse side. The member of the bar who acted as commissioner shall be given notice of the taking of depositions on behalf of the county. 7.

1225. Unless otherwise specially ordered by the court, ten days (five days, 4, 12, 51) notice of the execution of a commission of lunacy or habitual drunkenness, signed by the commissioner, and naming the time and place of taking the inquisition, shall be given to the alleged lunatic or habitual drunkard (and also to some one of his near relatives, if any there be, not concerned in the application, 4, 10, 14, 16, 18, 27, 28, 33, 35, 36, 40, 51), and also to some disinterested person to be designated by the court as the next friend, 12; and proof of the service of such notice shall accompany the report. 2.

1226. Every inquisition taken in the case of a lunatic or habitual drunkard, when returned shall be marked by the prothonotary "confirmed nisi," which shall become absolute unless exceptions thereto shall be filed or traverse made within the first four days (five, 4) (six, 40) of the term to which the inquisition is returned, 4, 10, 14, 18, 27, 28, 33, 35, 36, 40, or when taken before a commissioner, or judge of the court, within ten days from the filing thereof. 16.

1227. No person other than an attorney at law shall be a commissioner in cases of lunacy and habitual drunkenness. 2.

1228. Notice of an intended application for the sale or mortgage of the real estate of a lunatic or habitual drunkard (required by the 24th section of the Act of 13th June, 1836), shall be given to the wife, if any, and to the next of kin capable of inheriting his estate, 17, 50, at least five days before the first day of the term or court at which application is made; otherwise a rule to show cause only why a sale or mortgage should not be made will be granted, of which five days notice must be given, 10, 14, 16, 18, 27, 28, 33, 35, 36, 40, before the same be made absolute. 4.

1229. Unless otherwise specially ordered, every sale of the real estate of a lunatic or habitual drunkard shall be made upon the premises to be sold, and upon notice to be given by at least six printed or written handbills put up in the most public places in the vicinity of the estate, at least twenty days before the

day of sale, and by advertisement in two public newspapers, published in the county, for three successive weeks, the last of which shall be at least ten days before the sale. The terms of the sale shall be the payment of one-third of the purchase money in hand on the confirmation of the sale, and of the residue in two equal annual instalments from that time, with lawful interest on each instalment from the day of confirmation. The committee shall give security by a bond, with at least one approved surety, in double the estimated value of the estate to be sold, 10; and the order shall be made returnable on the first day (Saturday, 40) of the next following term of the court, 16, 40, and shall be issued by the prothonotary conformably to the 26th section of the Act of 13th June, 1836. 18, 27, 28, 33, 35, 36.

1230. The committee shall make his return or report of sale upon the said order in writing, stating upon his oath or affirmation that the sale was made to the best bidder and for the best price that could be obtained, and in conformity to the order as to notice, terms, etc. Upon return so being made, the prothonotary shall (enter the decree of the court in full, 27) mark the sale confirmed nisi by the court; which sale shall become absolute, unless exceptions to the sale be filed within ten days (six days. 40). Upon confirmation becoming absolute, the prothonotary shall enter the decree of confirmation in due form and at length upon the record, together with an order of the court that the committee convey the premises sold to the purchaser, his heirs and assigns, for such estate, right, title and interest as the lunatic or habitual drunkard had and held therein, on his payment of the purchase money according to the terms of sale, or securing the payment thereof accordingly by bond and mortgage or judgment bond: Provided, no sale shall be marked confirmed until the required bond and security have been given. 10, 16, 18, 28, 33, 35, 36, 40.

### MARRIED WOMEN

1231. All petitions presented to the court for the benefit of the act approved 3rd April, 1872, securing to married women their separate earnings, (shall be advertised in one newspaper published at the county seat once a week for two weeks and in the legal newspaper, 19,) shall be marked filed and a day fixed

for the hearing of the same. Notice of such hearing shall be given by advertisement for three weeks in at least one newspaper published in the county, 16, (in two newspapers by two insertions. 42.) If no cause be shown to the contrary, the petition shall be directed to be recorded according to the act. 7.

### MONEY PAID INTO COURT

[See also §§ 299, 822, 1124, 1524-1526, and 1676.]

1232. [Most of the courts have designated particular banking institutions as depositories for the money paid into court.]

1233. All moneys paid into court by the sheriff shall be paid by him directly to the banker, to the credit of the court in the particular case or matter, and the said banker shall keep a separate account of each of said payments, designating the case with the term and number thereof. 3. The sheriff shall keep a separate bank book with said banker for each court, in which said banker shall enter the money paid by him into court, and the name of the case in which it is paid, with the term and number thereof. And the entries made accordingly in said book shall be evidence that the money is so deposited with the said banker to the credit of the said court in the particular case or matter. A duplicate of said bank book shall also be kept by the prothonotary, in which the same entries shall be made by the banker. When the sheriff is about to pay money into court in any case or matter, he shall receive the said duplicate bank book from the prothonotary, and as soon as the deposits shall have been made, and the entry by the said banker shall have been made accordingly in each of the said bank books, the said duplicate bank book shall be returned by the sheriff to the prothonotary. 1.

1234. Upon the payment of any money into court to abide the order of the court, the same shall be deposited in such incorporated bank or trust company as the court (the prothonotary, subject to the court's approval, 21) may designate, to the credit of the court in that particular cause, 4, 5, 15, 21, 30 (and a certificate of the deposit shall be filed in the prothonotary's office. 2, 6). A copy of this rule shall be inserted in each bank book in which the deposits are entered, 2, 7, 9, 10, 11, 13, 14, 16, 17, 26, 27, 28, 29, 33, 35, 36, 38, 41, 44, 45, 46, 49, 50, and the same shall be handed over by the officer, at the expiration of

his term, to his successor or to the court. 23, 39. A bank book shall be kept in the prothonotary's office in which shall be entered by the officers of the bank all moneys therein deposited, with the name of the case or matter in which they shall have been paid. 18, 30, 37.

1235. Money paid into court shall be deposited in such incorporated bank as shall allow a reasonable rate of interest on such deposits. Banks willing to receive deposits shall file, in open court, a statement of the rate of interest proposed to be allowed by them on such deposits, and a copy thereof, with this rule, shall be inserted in the bank book in which such deposits are inserted. 11.

1236. Whenever hereafter any money is either ordered or permitted to be paid into court, payment must be made by a certified check drawn to the order of this court. This check must be endorsed for deposit in a specified bank by both the judges of the court in their official capacity, and their endorsements must be attested by the prothonotary under the official seal of the court. The deposit must be carried on the books of the bank in the name of this court, and no check thereon must be honored by the bank unless it is signed by both judges in their official capacity, and unless also their signatures are attested by the prothonotary under the official seal of the court. 12.

1237. The prothonotary is directed to deliver to the president or cashier of every bank and trust company now or hereafter doing business at the county seat, a certified copy of this rule, and to obtain from him a written acknowledgment that the bank or trust company has received notice of its provisions. 12.

1238. Money in the hands of the sheriff, or other officer of the court, realized from sales of real or personal estate, after the return of the process upon which the same has been realized, may be ordered into court, on the application of any one deemed by the court to be a party in interest, upon the presentation of a petition stating the facts, under oath of the party or his agent or attorney: Provided, that the money may remain in the officer's hands, pending the controversy, by the consent in writing of the parties in interest or their attorney. 18.

1239. Parties wishing to extinguish overdue liens upon real

estate in which they have an interest, may, on motion and notice to the creditor, if he resides in the county, or his residence is known, pay into court the amount due, and have satisfaction entered upon the lien, 6, 18, 38: Provided, that all proceedings to procure satisfaction of judgments must be had under and according to the several Acts of Assembly in such cases made and provided. 30.

1240. To prevent mistakes, whenever the plaintiff's action is brought for several demands, or on a penal bond, recognizance, or other writing conditioned for, or on a covenant, instrument or contract payable in instalments or different sums, the defendant shall in his motion state specifically the demand, instalment or particular sum or sums he admits to be due, and offers to pay into court. 28, 35, 36.

1241. Whenever any money is in the hands of the sheriff, or any other person, in order to have it ruled into court, application must be made in writing, stating the interest the applicant has in the money, and that it is necessary that the law or facts in relation to the distribution should be decided by the court, or are in dispute, or some other valid reason given; which application must be verified by the affidavit of the petitioner, or his counsel of record. 19.

1242. No money shall be paid into court except by check or draft payable to the order of the court, across the face of which shall be written or printed in red ink the words: For deposit only to the credit of the court of common pleas in the (legal depository). When leave to pay money into court is asked for, the check or draft shall be exhibited to the court. 3.

1243. Upon the payment of money into court to abide its order, the same may be invested as the court shall direct. 24.

1244. A defendant may, on motion, at any stage of the cause (when or before he pleads, 8, 15, 32, 33) (upon notice to plaintiff or his attorney, 9) pay into court the amount which he admits to be due, together with the costs up to that time, 3, 4, 5, 6, 8, 9, 10, 11, 13, 14, 15, 16, 18, 21, 23, 24, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 41, 42, 43, 44, 45, 46, 48, 49 (and poundage, distinguishing the sum so paid in, in respect of the debt or damages from the sum paid in for costs and poundage, 39) of which he shall give notice to the opposite party, or his attorney, within ten days thereafter. 7, 38.

1245. The plaintiff may receive the amount so paid (unless impounded to answer the defendant's costs, 39) and either enter a discontinuance, or proceed to trial at his option. But in the latter case, he shall pay all costs subsequently accruing, unless he recover judgment for a sum in excess of that admitted to be due and paid into court, 3, 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 16, 18, 21, 23, 24, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 41, 43, 44, 45, 46, 48, 49 (with legal interest thereon. 9). In case he enters a discontinuance he shall be entitled to the same costs as if the defendant had confessed judgment for the amount paid into court. 42.

1246. When a garnishee admits money to be due the defendant, he may pay the same into court, with the same effect as if paid to the party or parties legally entitled thereto. 17, 18, 27, 36, 45, 50. (Failing to do this, he may be held liable for interest. 3, 8, 9, 12, 28, 36, 37). The court will make special orders for the disposition of the money so paid into court, or for the proceeds of such attached property as may be directed to be sold. 8, 9, 13, 14, 19, 28, 33, 35, 37, 41, 51.

1247. No money will be received except on application made in open court, when an order will be made as to its disposition: Provided, that nothing in this rule is to be construed to forbid special orders of the court compelling money to be paid thereinto as justice may require. 51.

1248. Nothing in the foregoing rules shall be construed to prevent a disposition of the money by agreement of the parties. 7, 9, 10, 11, 13, 14, 17, 23, 24, 26, 27, 28, 29, 33, 35, 36, 41, 44, 45, 46, 49, 50.

1249. The court will not hereafter award any money in court to any person, or his attorney, unless an application is made in writing, setting forth the claim of the applicant to the same, verified by the affidavit of himself or his counsel, except where the court shall have decreed the money to a party on the report of an auditor, commissioner, or otherwise. 19.

1250. When money is once deposited to the credit of the court it shall not be paid out except on the check of the prothonotary attested by one of the judges, and when the attestation of the judge is applied for, the order of the court directing the money to be paid out shall be exhibited; a copy of this rule and

the rules relating to the deposit of money shall be inserted in the court's bank book. 3.

1251. Money so deposited shall be drawn out of bank only upon an order of the court, attested by the prothonotary, 4, 6, 7, 11, 13, 16, 17, 18, 26, 27, 28, 29, 33, 35, 36, 37, 38, 46, 49, 50 (and countersigned by one of the judges, 2, 19, 21, 30, 39) (except in case of the final confirmation of an auditor's report, 23, 45) and the check shall show the particular cause, estate or matter in respect of which it is drawn. 5, 23, 39.

1252. Upon settling the bank book or books the checks shall be retained by the bank upon which they are drawn. 23, 39.

1253. No money shall be paid out of court by the said bankers, except on the checks of the prothonotary, accompanied by a certificate endorsed on each check, under the hand of the prothonotary and the seal of the court, that the said money was ordered to be so paid by two of the judges thereof. 1.

1254. All checks must be receipted for on the records of the court when delivered to the applicant or his counsel. 19.

1255. The prothonotary shall receive on all moneys paid into court at the rate of one-half of one per cent. (one per cent., 33, 44) on an amount not exceeding \$500 (\$300, 26) (\$1000, 5) one-fourth (one-half, 44) of one per cent. (over that sum, 5, 33) on an amount not exceeding \$1000, and one-eighth of one per cent. on sums exceeding that amount, 26, 44, yet so that his fees in any one case shall not exceed \$10. 6, 18, 30, 37, 48.

1256. It shall be the duty of the prothonotary on the third Mondays of March, June, September and December, in each year, to exhibit to the court their bank books, showing the amount deposited and in what cases. 2.

1257. Commissioners appointed to distribute money paid into court shall be members of the bar, and shall be subject, as respects their appointment and duties, to the same rules hereinbefore provided in reference to auditors. 3, 27.

1258. The prothonotary shall keep a docket to be called the bank account docket, in which shall be entered an account of all moneys paid into court, designating the names of the parties to, and the term and number of the suit or execution, or in other cases the name of the estate or proceeding to which the money



appertains, and when a check is given on any court fund, the same shall be receipted for in this docket. 3.

1259. The prothonotary shall keep a regular book containing a memorandum and copy of all checks drawn and the date thereof, 5, of all deposits made, and in which shall be entered the orders of the court in relation thereto, so that the record will fully explain itself. 6, 21, 27.

### MOTIONS AND RULES TO SHOW CAUSE

[See also Arguments, Practice and §§ 253, 416, 501, 513, 521-524, 536, 575, 578, 579, 652, 686-688, 1349 and 1552.]

1260. The names of the gentlemen of the bar will be called according to seniority of admission (alphabetically, 24, 25, 37, 42) (as the court chooses, 16) and each counselor as his name is called shall submit his motions, and present his petitions, but no argument shall be heard. 16, 20, 24, 25, 28, 33, 35, 39, 42, 46, 47, 49.

1261. Motions and petitions may also be presented on any day in term time, at the meeting of the court in the afternoon. Motions relating to the trial list are always in order. 28, 35, 39.

1262. The prothonotary shall provide, and keep in court, a book wherein any member of the bar, desiring to make a motion, shall write his name, and all motions shall be heard in the order in which the names of counsel shall appear thereon. 11, 26, 45.

1263. The first and last days of each week, 14 (Saturday of each week, 40) (Mondays, 21), shall be the regular days for hearing motions, 40, until the noon of the adjournment; and no motion shall be entertained at any other time unless on notice to the adverse party of the time when the intended motion is to be made. The clerk shall be present in court on all motion days during the hours fixed by these rules for motions. 14, 21.

1264. No motion or petition will be heard (or decision announced, 18) at any other time than on a regular motion day, 5 (or when the bar is called, 16, 18, 20, 24, 25, 28, 35, 46, 47, 49) (except relating to a cause on the list, 42, or for naturalization, 47), unless the urgency of the case requires it, and then only on notice to the opposite party, or his attorney, 4, 6,

10, 17, 18, 20, 26, 33, 37, 40, 45, 50 (and the consent of all parties interested. 8, 18). But all adjourned or special courts for arguments, as well as the dates specially fixed, shall be considered regular motion days, 11, 28, 35, this rule being intended to apply to weeks set apart for the trial of jury cases. 30.

1265. No motion will be entertained without reasonable notice to the opposite counsel, if any, except upon motion days, and notice of all rules, taken at other times, must be regularly given, unless waived in writing. 6. When it seems necessary to prevent injustice, the court may dispense with notice of motions upon such terms as shall be just. 18, 37.

1266. All motions made by counsel, and rules obtained, and the reasons therefor, shall be in writing, 10 (signed by the counsel making the same, 5, 6, 18, 21, 30, 37, 38, 48), shall specify the names of the parties and number and term of the case, 37, 40, 50, and if entertained shall be handed to the prothonotary, 9, 12 (properly endorsed, by whom they shall be immediately filed, 2, 4, 17, 39, 40, 43, 45, 51, with the action of the court endorsed thereon. 3, 6, 13, 14, 18, 22, 27, 28, 30, 35, 36, 41, 48). The prothonotary shall enter the same on the minutes, and note on the motion the time of delivery to him. 1, 7, 8, 10, 11, 13, 15, 16, 19, 20, 23, 24, 25, 27, 33, 34, 41, 44, 46, 49.

1267. The prothonotary shall not enter or file any motion that is written on less than a half sheet of legal cap paper of the ordinary size, 16, 43, nor shall any paper except warrants of attorney to confess judgment, or the like, be filed, that is written or printed on less than a quarter sheet of such paper. 3.

1268. If a paper is presented by an attorney it must be (properly folded, 10) endorsed by him, 10, and he shall also endorse his name as a guaranty of good faith. In other cases the endorsement shall be made by the prothonotary. The quality of the paper shall be such that it may be written upon without the ink spreading. 3.

1269. No petition shall be presented to the court or filed, unless the signature of the attorney in charge of the same shall be endorsed thereon. 21.

1270. No citation or rule to show cause shall be granted except upon a petition, 3, verified by affidavit, 13, 45, setting forth the particular facts upon which the citation or rule

is asked for, 7, 17, except in cases where the grounds of the application appear of record, 11, 21, 23, 26, 44, or are agreed upon by the parties (or their attorneys, 9) in writing, 9, 28, 30, 35, 37, 39, 48 (and the same rule will be applied to facts in denial, 10, 14, 16, 27, 33, 36, 40, 41). Verbal statements of counsel, unless asked for, shall be out of order. 6, 18.

1271. Unless otherwise specially provided in these rules, or specially ordered by the court, all rules shall be returnable (not less than one week thereafter, 21) (in (ten days, 12, 50, 51) (fifteen days, 14) (twenty days, 20) after service) (to the next regular argument court, 16, 18, 42, 47, occurring more than (five days, 5) (ten days, 23) after the granting thereof) (to the first Monday of the month occurring more than ten days after the granting thereof, 17) (but all business of a miscellaneous or original character may be transacted at any session of the court, 7) and all rules granted by a law judge in vacation shall be returnable to the next term of the court. 20.

1272. The prothonotary (the court itself, 13), shall endorse upon all motions presented to the court the order of the court in full, 13, when the order is made, and transcribe the same into the record of the proper suit or proceeding, 18, and shall also transcribe all entries made in the rule books for any purpose, whether during the sitting of the court, or in vacation, without delay. 37, 48.

1273. A rule docket shall be provided and kept on the counsel table during the sessions of the court, in which rules to declare and plead, and other rules, and judgments for want of an appearance may be entered, without notice to the court, in all cases where by law or the rules of practice the same are allowable. Each entry shall give the parties to the suit, the number and term thereof, the day of the month when made, and the nature and character of the rule or entry, and the opposite counsel as marked on the record, and signed by the party making it, 28, 48, unless he be absent from the county seat at the time. 47.

1274. The prothonotary shall keep in his office a "watch book" for all rules, motions and other matters for the action or decision of the court, except issues for trial by a jury; and any person interested in such rules, motion, or other matter, or the attorney of any such person, wishing to bring forward the same

for the action or decision of the court, at any regular argument court, may place such rule, motion or other matter on such "watch book", and that shall be sufficient notice that the same will be called up for the action or decision of the court, at the time named in the "watch book": Provided, that the notice so given shall be four weeks before the first day of the sitting of such argument court, any other or shorter notice to be deemed insufficient, unless specially ordered by the court. 19.

1275. A rule book will be kept by the prothonotary, in which all rules taken by the attorneys and required to be reduced to writing must be entered, and from which they will be transferred by the prothonotary to the proper docket. 12.

1276. When motions or rules are taken on regular motion days at the calling of the bar, if the opposing resident counsel is unavoidably absent or sick, copies of the same shall be served on him, including a copy of the petition and affidavit upon which the rule is allowed; which said notice shall be served at least ten days before the time fixed for the hearing, or for answering the petition or the exigencies of the rule: Provided, this shall not apply to motions taken at bar for term rules to plead. 47.

1277. Notice of the granting of rules to show cause and citations shall be given to parties interested before the return day thereof; 17, otherwise they will be considered as abandoned. 14.

1278. The citation or rule issued thereon, together with a copy of the petition, shall be served at least ten days before the time fixed for the return thereof, 45, 47 (unless openly waived in court and the waiver noted. 24). When not required by Act of Assembly to be on the party, the service may be made on his attorney of record, 7, 26, 44, and if neither be resident in the county it shall be left with the prothonotary to be delivered to the petitioner. 20.

1279. Rules shall be served in the same manner as notices. 3, 5, 8, 39, 43, 44.

1280. If the party required to show cause shall not appear in obedience to the requisition of the citation or rule to show cause, it shall be lawful for the court, at any time after the return day and fifteen days service, upon proof by affidavit setting forth the time and manner of service, to order the petition upon

which the citation or rule to show cause was awarded to be taken as confessed, and to make such further order or decree thereon as may be just and necessary according to the Act of Assembly in such case made and provided. 17.

1281. In all cases of rules to show cause (except rules for a new trial, and such as are founded upon facts shown by public records of the court, 26, or county offices, 13), the allegations of the petition if sworn to (and a copy thereof served with the rule, 6, 11, 18, 19, 29) shall be deemed admitted (if served within ten days after it is granted, 13, 18) (unless the adverse party is acting in a representative capacity, 24) unless denied under oath by the opposite party by answer filed, 14, 18, 24 (before the return day, 7, 21) within (five days, 25) (ten days, 6, 26, 45, 47) (fifteen days, 3, 6, 11, 13, 17, 20, 29, 37, 46, 49) (twenty days, 16) (thirty days, 43, 44) after service. If the answer contain any new facts by way of defence and a copy thereof shall have been served upon the petitioner, he may file a replication under oath within ten days (fifteen days, 17) after notice thereof. 13, 17, 20, 26, 44.

1282. On the hearing of the citation or rule to show cause, the facts so stated in the petition (or answer) and not denied, shall be taken as admitted, 3, 7, 13, 17, 18, 20, 26 and no deposition shall be taken unless an issue of fact is raised by the petition and answer. 6, 21, 47.

1283. The court may, by special order extend or diminish the time for the service of the citation or rule to show cause, or for the filing of the answer or replication. 7, 13, 17, 20, 21, 26, 29, 37, 43, 44, 46, 49.

1284. The prothonotary shall insert in rules to show cause, and in notices, the substance of the rule aforesaid requiring the respondent to answer. 29, 37.

1285. All answers to citations, to rules to show cause, to petitions, and replications and rejoinders thereto, shall be in writing, so that the facts admitted and denied shall plainly appear. 17, 47, 50.

1286. All rules to show cause, coupled with an order staying a writ or writs of execution, shall be made returnable in open court or at chambers, within ten days from the day of granting the same, and, unless depositions sustaining such rule are filed before the return day of the same, such rule shall be dismissed

and such order revoked, of course, unless additional time be given by the judge granting the rule, on cause shown. Depositions in such cases may be taken on three days personal notice to the opposite party, or his attorney of record. 29.

1287. An answer under oath shall not be required of administrators, executors, guardians, or others in a representative capacity, where the matter in controversy arose prior to their appointment. 47.

1288. Answers to all rules, citations or other process, shall be filed before the convening of the court on the return day thereof, if the court shall be in session on that day ; but if there shall be no session of the court the answer may be filed at any time prior to the close of the return day. If an answer be not filed as aforesaid, the petition will be taken pro confesso, and the proper decree entered. 9.

1289. All motions to open, strike off, vacate, or satisfy a judgment of this court, when the return for such motion does not appear upon the record, shall be supported by the affidavit of the defendant, or some person cognizant of the facts alleged. The plaintiff shall be held to admit the facts set forth in the affidavit, unless he shall make answer denying the same under oath, within fourteen days after service of the defendant's affidavit upon him. If no answer be filed the rule may be set down for hearing upon the affidavit of the defendant. If an answer be filed, the testimony must be confined to the points put at issue by the plaintiff's affidavit. The admissions resulting from failure to reply shall be held to extend to the hearing of the rule only. 4.

1290. Every member of the bar in addressing the court shall stand in his place on the floor, 47 (in front of the prothonotary's desk, 34) and speak in a tone of voice sufficiently loud to be heard by all members of the bar who are present. 22.

1291. No communication or statement (argument or motion, 9) from any member of the bar, concerning any matter in which any other member of the bar can be interested, will be entertained by the court, unless it be made from (the motion table, 9, 20, 47) outside the prothonotary's desk, 8, 12, 46, 49, 51 (and in the trial of cases from his place in the bar. 9, 16). In so doing he shall read or state fully the petition or motion, and the decree or order he desires made. No argument will be heard during the calling of the list. 47.

**NATURALIZATIONS**

1292. Hereafter no application for naturalization will be heard in this court. 1.

1293. No application for naturalization shall be heard except at the times fixed. 3.

1294. The terms of court (varying in the different districts) of each year are fixed for the bearing of petitions for the naturalization of aliens. Applications will be received during the first week of the said terms, and at no other time, unless it shall be satisfactorily shown that property interests would be affected by delay. 6, 7, 17.

1295. Applications for naturalization of foreigners may be made on the appointed rule days. No application will be received at other times, except in cases where it is affirmatively shown that it would be a hardship to the applicant to refuse the same. 23.

1296. All applications for naturalization shall state in the body of the petition the time when, and the country from which, the applicant emigrated; the state, county, and township or ward of his present residence, and the length of such residence; when and where his declaration was filed, if at all; or if the application be made under the Act of 1824, in addition to the above, it shall state how long it has been his bona fide intention to become a citizen; or if made under the Act of 1862, it shall give the date of his discharge as a soldier, and in all cases, the names and residences of the vouchers to his application shall be inserted in their respective affidavits. 37, 48.

1297. No alien shall be admitted by this court to become a citizen of the United States except upon the following conditions: First, He shall be able to read the English language; Second, He shall have resided within this county continuously for one year immediately preceding his application for citizenship; Third, He shall produce at least two reputable witnesses to his residence and good character; Fourth, Only witnesses who have resided in the same vicinity with the applicant shall be competent to testify, and their testimony shall be limited to the period covered by their co-residence; Fifth, The testimony shall cover the full five years immediately preceding the application. 3.

1298. Every petition shall be sworn to as provided by law, and filed. It shall then lie over until the next term of court for exceptions or objections. Public notice of the application shall, unless otherwise directed, be published at the cost of the petitioner, for two weeks prior to final action thereon, in two weekly newspapers, to be designated by the court. (Any five citizens of the county will be allowed to file a remonstrance or objection to the naturalization of any alien at any time prior to the final hearing thereof. 7, 17.) The application shall state the name, occupation, and place of residence of the petitioner, including the street and number, when practicable. 6.

1299. If it shall appear by record or otherwise that, within the period of five years preceding the filing of the petition, the applicant has been engaged in any unlawful assembly, riot, affray, or other breach of the peace, or that he has been convicted of any criminal offence, or has participated in any combination or conspiracy intended to obstruct the due execution of the laws, or has attempted to unlawfully interfere with or control any person in the full enjoyment of his lawful rights, such conduct, notwithstanding the oath of the applicant, shall be deemed evidence that the petitioner is not attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. 6, 7, 17.

1300. All certificates from courts of other States must be certified according to the Act of Congress for the authentication of records. 32.

1301. Every applicant will be required to show that he is able to speak and read understandingly the English language, and that he has read (or has had read to him, 6) and understands the Constitution of the United States (and is acquainted with the elementary principles of the same, 6), and of the State of Pennsylvania, and is well acquainted with the principles of the government of the United States, and of the State of Pennsylvania. 7, 17.

1302. A petitioner not a resident of this county will be required to show, under oath, that his petition has not been rejected by any other court, and that there is a satisfactory reason for applying before this court instead of in the county of his domicile. 7, 17.

1303. No petition for a final decree of naturalization will



be received from persons residing in other counties of this State: Provided, that persons residing in other counties of this State, whose first papers were filed in this court, may be admitted to citizenship in this county. 32.

1304. Candidates for naturalization shall give notice to the prothonotary, at least ten days before their applications are presented to the court, of their intention to make application, which notice shall contain the name of the applicant and his place of residence, and the names and places of residence of his witnesses. From these notices the prothonotary shall make immediately a list of applicants and their witnesses, with their places of residence, for which service he shall be entitled to receive from each applicant a fee of twenty-five cents, to be paid when the notice is given, or the application will not be entertained. The list so made shall be posted in a conspicuous place in the prothonotary's office, and shall be open to free inspection. 3.

1305. When objection has been made in writing to the granting of any petition, a time certain shall be fixed for hearing, of which notice shall be given to the persons objecting, and any citizen may object at the hearing of any petition, without having previously filed his objection in writing. 6.

1306. No public officer of the county, or candidate for office, or member of any campaign or political committee, will be accepted as a voucher in any naturalization petition, unless by leave of the court for cause shown. Neither will any petition be granted where the petitioner has not voluntarily appeared for naturalization, or where the party applies at the solicitation of any party organization, or person for the purpose of acquiring the right to vote. 7, 17.

1307. Every petition for naturalization shall be endorsed by an attorney, who shall certify that he is the bona fide attorney for the applicant, and that he is not prosecuting the same as the attorney or representative of a political party, committee or organization. 7, 17.

1308. Every petition, including the certificate of declaration of intention, shall remain on file after the same has been acted upon, whether the petition has been granted or refused. 6.

1309. The officers' fees and costs of advertising shall be

paid by the petitioner in person at the time of filing the application. 6, 7, 17.

1310. The certificate of naturalization must be delivered by the prothonotary to the person applying to be naturalized, and the fees due thereon must be paid by the applicant and received by the prothonotary at the time when the application shall be approved by the court. 23.

1311. The prothonotary shall provide and keep a book, in which shall be entered, in alphabetical order, as soon as possible thereafter, the names and residences of all persons admitted to citizenship, with the proper date thereof, together with the names and residences of the several vouchers, which record shall at all times be open to inspection as other records in his office. 37, 48.

1312. A printed copy of the court rules on the subject shall be attached to each petition for naturalization. 6.

### NEW TRIALS AND ARREST OF JUDGMENT

[See also §§ 1139, 1140 and 1771.]

1313. All motions for new trials, in arrest of judgment, and to take off non suits (or for judgment non obstante veredicto, 12) shall be made and the reasons filed, within four days (five days, 9, 41) (ten days, 2, 17) (second Monday after the trial, 3) after the verdict, 5, notwithstanding points may have been reserved at the trial of the cause, 1, 14, 15, 17, 19, 20, 21, 36, 42, (unless the verdict be rendered within the last four days (three days, 4) (five days, 9, 41) of the term, when they must be made (before the judge at chambers, 29) before the term ends, 7, 9, 10, 11, 12, 13, 22, 25, 26, 27, 28, 30, 32, 34, 35, 37, 38, 40, 41, 44, 46, 47, 49, 51) (except it be the last day of the term, in which case they may be made upon the first day thereafter when the court shall be in session: Provided, the reasons therefor be filed within four days after the rendition of the verdict, 4, 11, 13, 16, 18, 23, 24, 26, 34, 43, 44, 45, 48), but the court may allow the motion to be made after the four days have expired, if under the particular circumstances of the case it appears that sufficient reason existed to cause the delay. 6, 8, 12, 29, 33, 51. All reasons for a new trial must be supported by affidavit. 19.

1314. In special cases a longer time may be granted to file reasons for a new trial. 9, 28, 35, 37.

1315. If any fact be alleged as a reason for a new trial which did not appear at the trial of the cause (or misconduct of a party or a juror is alleged, 20, 46, 47, 49) the motion shall be accompanied with an affidavit of its truth. 2, 20, 42, 46, 47 49.

1316 Reasons for a new trial grounded upon after-discovered evidence must be supported by affidavit filed with the reasons, stating the after-discovery, the names of the witnesses and the substance of their expected testimony, 5, 11, 16, 17, 24, 26, 45, and the party's belief of its sufficiency to change the verdict. 4, 6, 8, 9, 10, 12, 14, 18, 20, 21, 25, 27, 28, 30, 33, 35, 36, 37, 39, 40, 41, 48, 51.

1317. Motions for a new trial on the ground that the verdict is against the charge of the court, or the weight of the evidence, shall specify the particular points in the charge disregarded by the jury, or the matters of fact against which the verdict was given, or with respect to which the evidence was insufficient. 22.

1318. The reasons for a new trial and in arrest of judgment shall be served upon the adverse party within ten days after filing the same. 13.

1319. In all cases a copy of the reasons shall be furnished to the court before the argument. 14, 25, 27, 46, 49.

1320. If the court shall have risen before the expiration of the time allowed for filing the reasons, the proceedings on the verdict will not be stayed unless an application be made within that time to one of the judges of the court, with the reasons reduced to writing and supported by affidavit, and on a certificate of the judge that there is probable cause for staying further proceedings until the order of the court on the motion, the same shall be stayed accordingly, but not otherwise. 2, 19.

1321. When a motion is made in arrest of judgment, or for a new trial, the court will examine the reasons at the time the motion is made, and will entertain or refuse to entertain the motion at the time. 46, 49.

1322. On a motion for a new trial the court will determine, on the showing of the party by whom it is made, whether to grant a rule to show cause or not, without hearing (argument, 12) the opposite party, 3, 5 (and one counsel only will be heard in support of the motion. 1). If a rule is granted the cause

will be set down for argument, 16, 26, 27, 39 (and if refused judgment may be entered on the verdict, 12, 14), and the party who is to show cause against the rule shall be first heard by one counsel only in reply; but the court will allow a further argument by other counsel in cases which in their opinion require it. 1.

1323. No motion shall be made for a new trial after a motion in arrest of judgment, 47, but both may be made at the same time, 4, 6, 8, 10, 11, 12, 14, 16, 18, 21, 22, 23, 25, 26, 27, 28, 29, 30, 34, 35, 36, 37, 40, 43, 44, 45, 46, 48, 49, 51; nor will a motion in arrest of judgment be entertained after a motion for a new trial. 48.

1324. When in the course of a trial a bill of exceptions shall be taken to the opinion of the court, either in their charge or in the admission or rejection of testimony, the court may permit a motion for a new trial to be made and argued upon the same grounds as those on which the bill of exceptions shall have been taken. 14. This, however, is entirely discretionary, 26, 27, and in general will not be allowed, unless the court desire further argument, 21, or wish further time to deliberate on the subject. 8, 15.

### NON PROS

[See Abandonment of Actions, Abatement, Judgment, Pleading and Trial.]

### NOTICES

[See also §§ 162, 215-218, 221, 224, 227, 228, 265, 266, 351, 417, 419, 423, 424, 430, 431, 458, 460, 537, 549, 557, 558, 592, 597, 598, 600, 674, 677-679, 684, 689-692, 694, 695, 761-766, 799, 807, 809-811, 813, 814, 864-869, 893-900, 941-944, 980, 1077-1080, 1099-1105, 1195, 1197, 1206, 1225, 1231, 1265, 1276-1278, 1377, 1379, 1409-1417, 1554, 1563, 1603, 1605, 1624, 1645, 1687-1692 and 1797.]

1325. All notices (requiring personal service, except notices at bar, 3) shall be in writing, 1, 3, 4, 5, 6, 9, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 32, 34, 35, 36, 37, 39, 41, 43, 44, 45, 46, 48, 49, 50 (when not otherwise provided for, 7, 8, 29, 38), except notices by the prothonotary of the filing of depositions. 10, 14, 33, 40, 42.

1326. If an attorney be employed and has appeared in the

cause, all notices, pleadings and papers shall be served on him, except where an Act of Assembly or rule of court directs otherwise, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 30, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, and a rule of court shall not be construed to direct otherwise, except it expressly declare that service shall be made as well on the party himself as on his attorney, or that notice to the attorney shall not be sufficient. 16, 23, 39.

1327. Service on an attorney resident and having an established office in the county, shall be personal, 42 (or by leaving at his office, 6); if by reason of absence, illness, or the like, personal service cannot be effected, the notice, etc., may be left with a clerk or student or partner in his office, with notice to him of the contents. 47. If service cannot be had in either mode, the notice, etc., may be sent through the post office, if possible by registered letter or special delivery (indicating on the face of the envelope the nature of the enclosure. 16, 39, 50). Personal service on one of several attorneys shall be deemed service on all. 23.

1328. Service on a clerk, student or partner occupying the same office with the attorney, or an adult member of the attorney's family, in case of his absence from his office or residence, shall be sufficient service on the attorney. 17, 50.

1329. If both the party and his attorney reside out of the county, but within the Commonwealth, the service may be made on either at his residence, or personally, wherever found in the Commonwealth. If neither the party nor his attorney reside within the Commonwealth, notice may be given by publication. 4.

1330. Every practicing attorney residing in this county, whose office is not at the county seat, shall file for record with the prothonotary, a paper designating a place and person at the county seat, where and upon whom notice to him as attorney for his clients may be served, with the same effect as if service were made on him personally. And in the absence of such designation it shall not be necessary to serve notices on such attorney, except where it is required by some Act of Assembly. 46.

1331. Every attorney now, or hereafter to be admitted to practice in these courts, who has not an established office for the

conduct of his practice within the county, shall forthwith register in the office of the prothonotary, in a roll to be kept for that purpose, his name and the address of an office within the county, or a post office address. (And such office shall be deemed to be the office of such attorney, and a service thereat of all papers, notices and letters, required by law to be served, shall be deemed a personal service upon such attorney. If a post office address only is registered, then the deposit in the post office at Philadelphia of a registered letter directed to the registered post office address, shall be deemed equivalent to a personal service. 1).

In default of registration as herein provided for, a deposit with the prothonotary of any paper, notice or letter as aforesaid, shall be deemed equivalent to a personal service. 1, 15, 23.

1332. An attorney at law admitted to practice in these courts, not resident in the county, shall name some resident member of the bar, upon whom in any particular case in which such non-resident attorney has appeared, rules and notices that may be properly served upon the attorney may be served; and in default of this, the posting of the rule or notice in the office of the prothonotary, shall be deemed notice to the attorney as of the date of posting. The resident attorney so named shall have his appearance entered on the record. 16.

1333. When the attorney on either side does not reside or have an office at the county seat (a proper entry in the rule book, and notice by mail, if the address be known, shall be sufficient, 17) the deposit of a letter properly directed, and containing such notice, shall be deemed and taken to be equivalent to personal service of such notice on such attorney, from the time such notice is so deposited. 2, 6, 10, 40.

1334. Attorneys from other States, and, from other counties in this State, shall file with the prothonotary or clerk of the courts, a written agreement for the services of notices upon them, and name therein some fixed office or place within the county where notices may be received by leaving them at such designated place. In default of filing such an agreement, all papers and notices necessary to be served on such attorney, may be sent by mail to the last known address of said attorney, and upon filing with the prothonotary or clerk an affidavit of the mailing of such notice, the same proceedings may be had as

could be taken if said paper or notice had been personally served upon the said attorney. 32.

1335. If an attorney be not resident, but have registered the address of an office within the county, service at that office shall be deemed a personal service on such attorney. 47. If a post office address only is registered, then a deposit of a registered or special delivery letter directed to the registered post office shall be deemed equivalent to personal service. 23.

1336. In default of registration of a non-resident attorney a deposit with the prothonotary of any paper, notice or letter addressed to the name of such attorney, shall be deemed equivalent to a personal service. 23, 36, 47, 48.

1337. If the party served has not appeared by counsel (and resides in the county, 8, 12, 22, 23, 29, 34) the notice, etc., shall be served upon him by delivering to him a true copy thereof (or by reading the same in his hearing, 11, 16, 18, 19, 20, 24, 25, 26, 32, 33, 36, 39, 42, 43, 44, 46, 47, 49); or in case he cannot conveniently be found, by leaving such copy at his dwelling house with an adult member of his family, 8, 12, 16, 18, 22, 29, 32, 36, 39, 42 (or to his attorney of record, 51) or of the family in which he resides. 11, 19, 20, 23, 24, 25, 26, 33, 34, 43, 44, 46, 47, 49.

1338. If he has not appeared by counsel, and does not reside within the county, service upon him may be had by delivering a true copy to him personally, wherever he may be found, by messenger, registered letter or special delivery, 28, or in case his residence be unknown, by leaving such copy properly entitled and endorsed, and marked "A. B.'s copy", with the prothonotary, to be delivered by him to such party or his attorney on request, 23: Provided, that this form of notice shall not be adopted until after the time for entering an appearance has expired. 37.

1339. If the party to be served have no attorney of record, it shall be sufficient to serve a copy on the party himself or on his bail to the sheriff, or special bail, if any there be, 1, 2, 3, 5, 6, 7, 9, 14, 15, 16, 17, 19, 20, 22, 24, 25, 26, 32, 33, 34, 36, 37, 38, 39, 41, 42, 43, 44, 46, 47, 48, 49, 50, and if none, then by publication (as the court shall direct, 18, 28, 30, 36) for three successive weeks in the papers designated for the publication of legal notices, 11, 45, and by sending to the party a copy of

the advertisement by registered letter to his or her last known address. 13.

1340. When a party cannot be found within the county a notice or rule may be served upon him wherever he can be found. 8.

1341. Where by these rules notice is directed to be served on the party, and such party does not reside within the county, it shall be sufficient to serve such notice on the attorney of such party. 26, 33, 34, 44.

1342. Notices at bar shall be effectual only where a service thereof is accepted in writing, or a minute of the notice is made by the prothonotary. 3.

1343. Personal service of notice must be had in all cases wherein attachments may be awarded. 28, 30, 35.

1344. (The plaintiff, and the defendant after appearance entered, whilst the cause is pending, 40) and the plaintiff in error in a certiorari, and the appellant in cases of appeal from a justice, shall be considered in court during term time, and bound to take notice of rules entered (in open court on regular motion days, or during argument session, 40) during the term without further notice, but the opposite party, not having entered an appearance, shall be entitled to notice by service of all rules taken, or motions made. 6, 48.

1345. On regular motion days the attorneys of record in any cause shall be presumed to be present (whether residing in the county or elsewhere, 47) and shall be affected with notice 4, 6, unless known to be necessarily absent or indisposed, 30, where such notice may be required or shall be deemed just. 18, 37, 47.

1346. Except when otherwise provided, the entry on the record of any interlocutory orders, rules, etc., granted by the court in any pending cause or proceeding, shall be sufficient notice thereof to the parties; and other rules shall be served on the adverse party, at least twenty days before the time for hearing the same, or for requiring an answer thereto. 22.

1347. Notices shall be served by any competent person, in the manner prescribed by law for the service of a writ of summons. 4, 13, 45.

1348. A refusal to accept notice shall be deemed equivalent to service. 16, 42.



1349. If a notice be in pursuance of any rule granted by the court, a (duly certified, 18) copy of the rule (or petition, 47) so granted shall be prefixed to the notice and served in like manner, 11, 13, 18, 22, 23, 25, 26, 33, 34, 36, 44, 45, 46, 47, 49, (or such rule may be referred to therein by number, 20), unless taken at bar where there is counsel of record. 47.

1350. The notice and service shall be proved by producing the notice and rule of court, if in pursuance of such a rule, with a written statement, verified by oath, of the time and manner of service, 8, 10, 11, 12, 22, 29, 30, 40, 51, and that it was a true copy thereof, 16, 18, 19, 20, 24, 25, 26, 28, 33, 34, 35, 36, 44, 46, 49: Provided, that where a notice is served by a member of this bar, his certificate shall be taken in lieu of an affidavit. 47.

1351. Proof of service by affidavit of the time, place and manner of serving the notice, shall be filed in all cases, except where the service is made by the sheriff, 8, 43, and where service is by filing a copy in the prothonotary's office, the reason for so serving it must be stated in detail in the affidavit. 23, 37. Return of service by the sheriff or his deputies, unless otherwise required by Act of Assembly or rule of court, shall be considered as made under his oath of office. 47.

1352. Whenever by Act of Assembly, or order of court, notices are to be given or writs served by publication in a newspaper, the same shall be proved by an affidavit thereof, with a copy of the publication so made, attached and filed with the papers. 6, 37, 48.

1353. All other notices which relate to proceedings in court, the publication of which is required by law, or by the rules of court, shall be published in the legal newspaper (during the time required by law, in addition to any other papers which may be selected by the parties, the rates to be charged not to exceed those charged by other papers for advertisements of the same character. This rule is not to apply to cases where the law requires that publication shall be made in the paper having the largest circulation, or where otherwise ordered by the court, 17) and in one other newspaper of general circulation, issued at least once a week, and to be designated by the court. 32.

1354. Whenever any notice, including advertisements of judicial sales, writ, rule or order whatever, shall be required to be published in any newspaper, the publication shall be made

in the papers designated by the court, by general rule or special order, as from time to time the same may be made. Such publication in any German newspaper under such order shall have the same force as a publication in an English newspaper. 7.

1355. In all cases where no designation shall have been made or provided for by general rule, or order of court, the plaintiff in the writ, or party procuring the rule or order, or his attorney of record, shall endorse upon the præcipe, petition or motion, the newspaper or newspapers in which he desires the notice or advertisement to be inserted; whereupon a special order designating the newspaper named shall issue as of course: Provided, that unless cause be shown, only weekly newspapers of general circulation within the county shall be so designated; and the defendant or other party to the proceeding adversely affected, or other creditors, may apply to the court, or judge in vacation, to change the newspaper selected for publication, upon cause shown. The designation made by parties may be disregarded, and the order changed by the court or judge in vacation, upon application or of its own motion. 7.

1356. No writ or order to be followed by advertisement will be issued by the prothonotary until the designation provided for as above shall have been made, and any advertisement not made in compliance with these rules shall be deemed insufficient notice, and the proceedings upon application or otherwise will be set aside. 7.

1357. All notices required to be published shall be printed in a newspaper published at the county seat, and posted in the prothonotary's office. Where publication is made in more than one newspaper, then at least one must be published at the county seat. 24.

1358. Whenever publication shall be required to be made of any writ, rule, order, decree or notice, or of the substance thereof, and it is not otherwise provided for by law, rule or order, it shall be made (in the newspaper and at the place designated by the court, or if neither paper nor place be designated, 36) in any (two, 10, 16, 40) newspaper published at the county seat, for at least three consecutive weeks, 50, the last insertion being at least ten days before the return day, time of hearing, or act to be done, or time whereof knowledge or notice is to be given, 10, 16, 40 (and so far as the time, place and paper of any publi-

cation required by any law, rule or order, shall be left unprovided for, or not designated therein, the omission shall to that extent be supplied by this rule. 18, 36). (In all cases without other special provision, if in one paper, it shall be in one printed and published at the county seat; if in two, at least one at the county seat; and successively for the number of weeks required; and in weekly papers, in the English language. 28.) The proof of publication, except where it is otherwise provided for, shall be the return of the sheriff, prothonotary, or other officer or person causing it to be made, in writing, under his oath of office; or the affidavit of the publisher, or his foreman, or other person knowing the facts, setting forth the time and place of publication, and the newspaper in which the same was made, and endorsed upon or accompanying the matter published and filed therewith. Where a party to be reached by publication is served personally, after an order to publish, as to the party thus served it shall be deemed sufficient, and stand in lieu of such publication. 18, 28, 30, 33, 35, 36.

1359. In all cases in which, by Act of Assembly, or rule of court, publication of notices shall or may be required in two newspapers, such publication, in the absence of a special order to the contrary, shall be made in one English and one German newspaper, of general circulation, published in this county, 23, and in the legal newspaper once a week during four weeks immediately preceding the happening of the event of which notice is given. 3.

1360. In all cases where publication is necessary, notice shall be given, unless an Act of Assembly or the court otherwise direct, in two newspapers in the county one (both, 22) of which shall be published in the principal county town, once a week for three successive weeks, 22, the last insertion being at least one week before the return day, time of hearing or act to be done, whereof notice is to be given. 21.

1361. When in lieu of personal service, notice shall be directed by the court to be given by publication, in the newspapers, affidavits of the compliance with such order must be filed with the prothonotary previous to any subsequent proceedings. 21.

1362. All notices which relate to proceedings in court, the publication of which is required by law or rule of court, shall be

published in the legal periodical, during the time required by law, in addition to any other papers which may be specially ordered, or which may be selected by the parties. 5.

1363. The rates to be charged in the legal newspaper for all legal notices ordered to be published therein by the rules of the several courts of this county, shall in no case exceed those charged by other papers for advertisements of the same character, and in view of the publication therein of said legal notices, and the better to utilize the same, and perpetuate for reference the publications therein made, one number of each issue of said paper shall be deposited by the publisher in the offices of the Prothonotary, Clerk of Orphans' Court, Register of Wills, Clerk of Quarter Sessions, and in the Law Library, and it shall be the duty of those officers to keep on file and preserve the same for public use forever thereafter. 2.

1364. The prothonotary shall keep in his office a bulletin board upon which it shall be the duty of the sheriff, auditor, and every committee, trustee, and assignee, to post at least ten days before day of performance, a copy of all notices required to be given by publication, except notices of sheriff's sales. 13.

1365. Notices of hearings before auditors, masters, commissioners, referees, inspectors, and the like, shall be duly posted in the office of the prothonotary for at least fifteen days prior to the date fixed for such hearing. 20.

1366. The prothonotary shall provide three separate notice or bulletin boards of suitable size and shape to be placed in a prominent and convenient position in his office. On one of said boards, labelled "Notices of Accounts", he shall affix notice in writing of the filing of all accounts immediately upon the filing thereof, including the name of the estate, name of accountant, and date of filing, with space to add date of exceptions, should any be filed, and the appointment of an auditor. On the second board, labelled "Auditors' Notices", it shall be the duty of the persons appointed auditors on an account, or commissioners to distribute funds, to affix a similar notice of the name of the estate (or character of the funds) name of auditor or commissioner, and the time of meeting, with space to add the date of filing of report, and the fact of exceptions having been filed. On the third board, labelled "Miscellaneous Notices", shall be posted

all such other notices as may be required to be put up in the said office. 23.

1367. Notice to produce books or papers on the trial in order to the admission of secondary evidence of their contents, must be served as well on the party, if he lives in the county, as on his attorney, unless the book or paper is in the possession of the attorney (or unless he will expressly waive notice to his client. 16, 23, 39). (If he live out of the county, the notice may be served on the party, or an attorney, allowing always sufficient time to communicate with his client, and to have the documents forwarded to him before the trial. 42). In the case of joint parties, or of several persons having the same interest, one only need be served. 16, 39.

1368. In order to give notice and prevent surprise, a book shall be kept by the prothonotary in which all rules taken in any case by virtue whereof a judgment may be entered, shall be copied immediately after they are entered; and no judgment shall be entered by virtue of any rule unless the same shall appear to have been copied into this book in due time. Entering a rule in the rule book shall be deemed sufficient notice of the same (if entered in term time, 23, 35), unless when the adverse party has no attorney of record, in which case the rule shall be served on the party by copy, and in the manner directed for the service of notices. 36.

1369. Where notice is required to be given by handbills, at least six printed or written handbills must be put up in the most public places in the township, borough, school district or neighborhood interested in the view, etc., of which notice is to be given, 17, 50, unless where an Act of Assembly requires more than six bills, in which case the Act shall be followed 47.

1370. In actions against the executors or administrators of a decedent who shall have left real estate, when the plaintiff intends to charge such real estate with the payment of his debt, notice of the writ to the widow and heirs, or devisees (and the guardians of such as are minors residing out of the county, shall be given by registered letter directed to the last known post office address of such persons, where, after diligent inquiry, the post office address cannot be ascertained, which fact shall be made to appear by affidavit to be filed in the cause, 3) notice to such persons shall be given by advertisement, 3 (in any daily

newspaper, in the county unless otherwise ordered by the court, 5) in two newspapers printed in the county for three weeks. 27, 41.

1371. In actions against the executors or administrators of a decedent who has left real estate, where the plaintiff intends to charge such real estate with the payment of his debt, the widow and heirs or devisees (and the guardians of such as are minors, 12, 23, 24, 34, 37, 42, 51) who reside out of the county, shall be served with notice of the writ personally, 7, 38), by the sheriff's publication of the writ (as before provided, 18, 21, 28, 35) or the substance of it, in one, (two, 14, 22) newspapers (and also one German newspaper, 23) designated by the court or a judge thereof, once a week for three (two, 30) successive weeks previous to the return day, 8, 13, 14, 20, 22, 24, 25, 26, 29, 30, 34, 36, 42, 43, 44, 45, 46, 49, 51 (or from the issuing thereof until the return day, if issued ten days and less than three weeks before the return day thereof, 7, 38) (and also in the legal newspaper, 1, 11) (or by personal service of a copy of the writ at least ten days prior to the return day thereof, agreeably to Section 34, Act 24th Feb., 1836, relating to executors and administrators, 23 and by mailing, postpaid, a marked copy of each issue of the newspaper containing such notice to the last known post office address of such non-residents. 12, 51). The plaintiff, on applying for the order of publication, shall file an affidavit setting forth all he knows, or is able to learn upon inquiry, respecting the residence and address of such widow, heir, devisee or guardian, and where the residence of any one of them is known, the sheriff shall send a marked copy of such newspaper to his or her address; and proof of such publication and sending shall be filed. 23, 39.

1372. Whenever notice is to be given or service made by publication, the method to be followed shall be the same as is prescribed in actions to charge real estate inherited by non-residents, unless a different method be prescribed by statute or special order of court. 12.

1373. Publication of the alias writs of summons, required by the Act of Assembly entitled "An Act for better securing the payment of ground-rents", shall be made by the sheriff in the legal newspaper, and such daily newspaper as he may choose, once a week, for two successive weeks prior to the return day of such writs. 1.

**OYER**

1374. Oyer of any instrument which is the foundation of the action, may be demanded in writing of the plaintiff's attorney at any time after the return day of the writ. Upon non-compliance with the demand for twenty days (fourteen days, 36) (fifteen days, 18) (thirty days, 43) after the same is made, judgment of non pros will be entered by the court, on application, unless sufficient cause be shown to the contrary, 9, 10, 16, 18, 26, 28, 30, 33, 35, 36, 41, 43, 50: Provided, that the party craving oyer make oath that he cannot make an affidavit of defence without an inspection of the paper demanded. 14, 27.

1375. The party demanding oyer of any instrument shall have time and opportunity to take a copy thereof, if he so desires. 18.

**PAPER BOOKS**

[See Supreme Court Paper Books.]

**PARTITION**

[See also § 1616.]

1376. Petitions for partition may be filed in vacation, and citations or rules issued by the prothonotary to show cause why the same should not be made. The petition must set out the names of all the parties in interest, and aver that no other parties are interested. 17.

1377. Publication of a summons in partition and of notice of the inquisition, shall be made by the sheriff, where parties reside out of the county, as directed by Sec. 4, Act 11th April, 1835. 39.

1378. Reports of sales of real estate, of inquests and commissioners in partition, shall be proceeded in in the same manner, and be subject to exceptions within the same time as reports of auditors. 2.

1379. Parties residing out of the county, cited by publication to appear and show cause why partition should not be made, shall not be entitled to notice of further proceedings unless they appear by a resident attorney, upon whom notice may be served. And all parties who do not appear by attorney shall

pay all costs of services of notices, etc., on them, rendered necessary by such non-appearance. 17.

1380. In all cases of partition, rules on heirs, or parties in interest, to come in and accept or refuse to take at the valuation, or show cause why sale should not be decreed, or offer to take it at an enhanced price over the valuation, shall be returnable on the first Monday of each regular term at 2 P. M., and proclamation shall be made at the time. 20.

1381. In all cases of partition the sheriff shall make return of the inquisition on the first day of the term to which the writ is returnable; which said inquisition shall then be confirmed nisi, and if no exceptions be filed within four days thereafter the same shall be confirmed absolutely by the court; and thereupon a rule to accept or refuse the said estate, or parts thereof at the valuation, may be entered returnable to the first day of the next term. 26.

1382. Inquests in partition, if appearing to be correct, shall, on presentation to the court at the return day thereof, be confirmed nisi and filed, which confirmation shall become absolute unless exceptions shall be filed within ten days: Provided, that, when deemed necessary, the court may direct special notice to be given. Upon the return of the inquest the court will upon application, if no exceptions have been filed, grant a rule upon the parties interested to appear and accept or refuse the premises at the valuation, or show cause why the same should not be sold, but such rule shall not be issued until ten days after confirmation nisi, and not then if exceptions shall have been filed, until the same have been disposed of. 17.

1383. When parties have the right to bid more than the appraised value, and are properly in court in obedience to the rule to accept or refuse, each purpart shall be taken up separately by the court and disposed of. Sealed bids only will be received severally or jointly of parties in interest, and after all that desire have bid, the bids shall be opened by the court, or under its direction, and the purpart bidden for forthwith announced, and awarded to the party or parties who offer the highest price for the same over the valuation. 17.

1384. The reasonable counsel fee of the attorney for the petitioners shall be taxed as part of the costs and paid proportionately by the parties. But this shall not embrace fees paid



for litigation, if any arises during the proceedings. Where a party deems the fee as taxed excessive, he may appeal to the court from the taxation thereof, when the court will take such action as is deemed just in the premises. 17.

### PLEADING

[See also Bills of Particulars and § § 1-11, 27, 28, 109, 110, 256, 267, 268, 274, 275, 282, 285, 490, 499, 571-573, 649, 976-978, 1118-1123, 1670, 1671, 1679, 1680 and 1857.]

1385. Unless it is otherwise expressly mentioned, the rules under this title shall apply only to actions of assumpsit and trespass, and to proceedings instituted by scire facias. 3 .

1386. In all cases where a statement is necessary the same may be filed on or before the first day of the term to which the writ is returnable : Provided, that the filing of a statement under this rule shall always be considered de bene esse, before service of the writ, or appearance, or bail entered, or deposit made, and shall be amendable of course to conform to the service, or otherwise, and shall not be deemed any waiver of the plaintiff's right to bail or otherwise. 36.

1387. Plaintiff's statement shall contain a specific averment of facts, sufficient to constitute a good cause of action, 11, 43, 45, shall contain an explicit averment of the amount claimed to be justly due, 1, 2, 8, 9, 18, 19, 20, 23, 26, 32, 37, (and shall embrace a particular specification of the date of the promise, book account, note, bond, penal or single bill, or all or any of them, on which the demand is founded, 7) or the damages sustained, and must be complete in itself, either by containing all necessary allegations, or by expressly referring for some of them to other parts of the statement. If it embraces more than one cause of action, each cause of action shall be separately stated and numbered, and begin with appropriate words to designate it as such. Thus :

A. B. vs. C. D.

The plaintiff, complaining of the defendant, alleges

*First.* For a first cause of action :

1. That etc., etc.

And the plaintiff avers that there is justly due him, in respect of his first cause of action, fifty dollars.

*Second.* And for a second cause of action :

1. That etc., etc.

To the damage of the plaintiff fifty dollars.

Wherefore, the plaintiff demands judgment against the defendant for the sum of one hundred dollars. 16, 39.

1388. Plaintiff's statement shall be as provided by Section 3 of the Act of 25th May, 1887. 14.

1389. The statement provided by the Procedure Act of 25th May, 1887, may be in the form of a common law declaration accompanied with a full bill of particulars, containing all the information required by said Act, or, at the option of the plaintiff, may be without form as provided by said Act 32.

1390. Such statement (in actions of assumpsit, in order to entitle the plaintiff to judgment by default, unless the action is brought on a writing signed by the defendant, 20, for the direct and unconditional payment of a certain sum of money at a certain time, 18) shall be supported by an affidavit of the truth of the matters alleged as the basis of the claim, 1, 2, 18, 26, including the credit items, and of the amount of damages claimed. 9, 19

1391. The copies of notes, contracts and book entries, required by the third section of the Act of Assembly, approved May 25th, 1887, to be filed with the statement, shall embrace all items of credit thereon, or properly applicable thereto. 19.

1392. In actions of assumpsit, the embodiment in the plaintiff's statement of a copy of the cause of action, or reference to a record, required by statute to accompany the statement, shall not be deemed a compliance with the statute, in the absence of a separate copy or reference. 23.

1393. In suits upon recognizances and instruments of record in any of the courts or offices in the county, a full copy thereof need not be filed, if the declaration or statement, or præcipe for the scire facias, contains a full reference to the office, book and page where the same may be found, 4, 21, 24, 25, 27, 29, 38, 46, 48, 49, and in such case, no affidavit to the statement is required. 28, 33, 35.

1394. In all declarations a particular reference to any record of the court, or to any deed, mortgage, or other instrument of record in the county, shall be sufficient in lieu of a copy thereof. 16.

1395. In the action of trespass, the declaration to be signed by the plaintiff or his attorney, shall contain a particular, clear and concise statement of the plaintiff's complaint, relating specially the causes and grounds upon which it rests, and the amount of damages claimed. 16.

1396. Where the plaintiff desires to recover more than compensatory damages, he shall set forth in his statement the circumstances upon which he relies to sustain his claim (such as a former action, negligence, recklessness, oppression, wilful trespass, or any other circumstance which would in law justify such damages, 10, 18), for punitive or vindictory damages, and therein avow his purpose to so claim. 16.

1397. No declaration shall be necessary in any kind of scire facias, or in ejectment (but the defendant shall plead thereto, in the same manner as if a narr had been duly filed, 27, 36), or in judgment by confession, or a warrant of attorney. 17, 50.

1398. The first pleading shall be entitled the "statement", which when practicable shall be divided into paragraphs, numbered consecutively, and shall contain a concise statement of plaintiff's demand, but not the evidence relied on to support it. 3.

1399. Where the demand is for a sum certain, the amount which the plaintiff believes to be justly due to him from the defendant shall be stated; also all undisputed credits to which the defendant is entitled; where damages are claimed that are such as the law implies, an averment that the plaintiff has sustained damage, without naming any amount will suffice, but where special damage is claimed, it shall be averred with particularity; the common counts, as such, shall not be used, nor shall the defence be anticipated. 3.

1400. If the action or proceeding be on a mechanics' lien or municipal claim, or on a deed, mortgage, will, or other instrument on record in the recorder's or register's office of this county, or on the record of any court of record of this county, a copy of such lien, claim, deed, or other instrument or record need not be set forth, but a reference to the place of record will suffice; if the action be against an insurance company on one of its policies, in lieu of a copy of the policy, only the number, date and import thereof need be stated. 3.

1401. In all other cases where the action is in whole or in part on a deed, mortgage, or other written or printed instrument, or on book entries, or on a record, a copy of the instrument, book entries, or record shall be annexed to the statement, and become a part thereof; unless the instrument, book entries, or record is lost or destroyed, and the plaintiff has no copy, when in lieu of a copy only the substance need be stated; when a copy is annexed, the fact that it is a true copy must be averred. 3.

1402. If the plaintiff relies on any misrepresentation, fraud, breach of trust, wilful default, undue influence, or the like, particulars shall be stated; but where malice, fraudulent intention, knowledge, or other condition of mind is alleged, it shall be sufficient to allege the same as a fact, without setting out the circumstances from which the same is to be inferred; so also of an allegation of negligence. 3.

1403. The execution or delivery of an instrument, or the drawing, making, delivery, endorsement, acceptance, non-acceptance, non-payment, protest, or notice thereof, of any bill or note, a copy of which instrument, bill or note, with the endorsements, if any, is annexed to the statement, need not be averred, but the same shall be taken to be admitted unless expressly denied. 3.

1404. On the statement shall be endorsed a notice in the following form: "To the person or persons served with the within statement. Take notice, that you will be liable to have judgment entered against you after the return day of the writ and fifteen days service of the within statement upon you, unless in the meantime you file in the office of the prothonotary your answer to said statement verified by affidavit, and that you will be further liable to have judgment entered against you unless on or before the return day of the writ an appearance is entered by or for you." 3.

1405. The plaintiff shall hand his statement to the prothonotary with his præcipe, in default of which the writ shall not issue, unless it is necessary to issue the writ before the statement can be prepared, in which event a certificate to that effect, to be signed by the plaintiff or his attorney, and filed in the cause, may be substituted, but then the statement shall be handed to the prothonotary within fifteen days thereafter. 3.

1406. The prothonotary shall hand the statement as soon as received, to the sheriff, who shall serve the same and endorsed notice on all persons served with the writ; when the statement accompanies the præcipe, it shall be served and returned with the writ; in other cases within five days from its receipt by the sheriff; service shall be made as the service of a writ of summons by copy when that can be done; if it cannot be done and the post office address of the defendant is known, service shall be by registered letter; but if the defendant appears by attorney, service shall be on his attorney. 3.

1407. If service cannot be made as aforesaid, a return of nihil shall be deemed its equivalent; where the exhibits annexed to a statement contain more than five hundred words, or if there be more than one party defendant, and the exhibits contain more than two hundred words, a copy thereof need not be served; however and whenever made, a minute of the time and manner of the service, verified by affidavit, shall be endorsed on the statement, which shall then be returned to the prothonotary and filed. 3.

1408. If the statement is not handed to the prothonotary within the time limited for that purpose, judgment of non pros shall be entered; at any time after the return day and fifteen days service of the statement, judgment shall be entered against the defendant unless an answer shall have been filed, or if the time to answer has been enlarged, after the expiration of such time; so in appeals from the judgments of aldermen and justices of the peace, if the statement or answer is not filed within the time limited for that purpose, judgment shall be entered against the party in default; so on failure to declare or plead, or to furnish particulars in response to rules for that purpose; so in attachment proceedings for failure to answer interrogatories, or for amount admitted in the answers. 3.

1409. Service of the copy of the statement, or of the notice that the statement has been filed, shall be as follows:

(a) By the sheriff with his writ, and his return shall be in lieu of the affidavit otherwise required.

(b) Upon the defendant's attorney of record.

(c) Upon the defendant personally, in the manner prescribed by law for the service of the writ of summons. 20, 39.

(d) If the defendant resides out of the county, and has

no attorney of record residing in the county, such service may be made upon him wherever he may be found, by messenger or registered letter.

(e) If the residence of the defendant is without the county and unknown, and he has no attorney of record residing within the county, such service may be made by leaving with the prothonotary a copy of the statement or notice, marked defendant's copy, and the prothonotary shall deliver the same to the defendant or his attorney on request. 13, 30, 45.

1410. Service may be made by the sheriff or any competent person; and except where made by the sheriff, an affidavit of the time, place and manner of such service (which in case of service by registered letter shall be accompanied by the registered return receipt, 13, 45,) shall be filed in all cases. 2, 8, 13, 16, 20, 39, 45.

1411. The plaintiff shall serve a copy of the statement of claim (and of copies of the notes, contracts and book entries filed therewith, 19) on the defendant or his attorney of record, if he has one, at least fifteen days before moving for judgment by default (for want of an affidavit of defence, 9, 16, 19, 24, 32) except for want of an appearance. 1, 2, 21, 26.

1412. Such copy may be served by the sheriff with the writ, and his return shall be in lieu of the affidavit otherwise required. 1, 2, 9, 10, 16, 21, 23, 26, 32, 50.

1413. If the defendant resides out of the county and has no attorney of record, the copy may be served on him wherever he may be found; by messenger or registered letter. 1, 21, 26, 32.

1414. If the residence of the defendant is unknown, and he has no attorney of record, the copy intended for him to be marked "defendant's copy", may be served by leaving it with the prothonotary, who shall deliver it to the defendant or his attorney on request. 1, 2, 21, 23, 26, 32.

1415. An affidavit of the time, place and manner of serving such copy shall be filed in all cases, except where service is made by the sheriff. 1, 9, 10, 16, 21, 26, 32.

1416. When the defendant's copy is filed in the prothonotary's office, the reasons for so filing it must be stated in detail in the affidavit. 1, 21, 26, 32.

1417. An acceptance of service by the defendant or his

attorney of the copy of statement of claim required by the Act, shall be taken in lieu of an affidavit of service. 21.

1418. In all suits a copy of the declaration and every subsequent pleading shall be served by the party, or his attorney filing the same, on the opposite party or his attorney of record; otherwise such declaration or other pleading may be treated as a nullity: Provided, however, that it shall not be necessary to serve a copy of the declaration upon a defendant or defendants who have not appeared to the action; and provided further, that notwithstanding no appearance may have been entered at the time of filing the declaration, no judgment for want of a plea shall be entered, unless a copy of the declaration has been served on the defendant or his attorney with the rule to plead. 1.

1419. Counsel for the defendant may appear for him and waive the issuing and service of a writ; and he may also accept service of a copy of plaintiff's statement, in case a copy has been left with the prothonotary for that purpose. 9.

1420. When any statement, bill of particulars, answer, affidavit of defence, demurrer or other pleading is filed in any case, a copy thereof shall be served on the attorney of the opposite party within five days after the same is filed. 6.

1421. All copies of plaintiff's statement of demand, and all notices provided for, shall be made out by the prothonotary on the application of the plaintiff or his attorney, and proof of the service of said statement and notices shall be made by the return of service filed in the prothonotary's office, verified by the affidavit of the person making the same. 7.

1422. If the defendant does not regard the plaintiff's statement as sufficiently specific, he may enter a rule upon the plaintiff in the prothonotary's office, returnable in twenty days, to file a more particular statement of his complaint; and in default of a compliance therewith, the court, on the trial of the case, shall restrict the plaintiff in his proofs to such matters as shall have been set out with sufficient particularity in the statement; and will also confine the plaintiff in his proofs to such matters as are sufficiently specified in the amended statement filed. 24.

1423. In default of such requisites, the defendant may, in the discretion of the judge of the court, obtain an order for a

more specific statement, upon application by petition setting forth the alleged deficiency, and serving a copy thereof on the plaintiff, or his attorney, with forty-eight hours notice of the time and place of said application. The application must be heard at the court, when made, within five days prior to the sitting thereof. The plaintiff may amend his statement in the particulars complained of, and serve notice thereof in like manner as the original statement, and be entitled to judgment as upon the original statement, subject in like manner to a rule for a more specific statement as above set forth, and so on as often as occasion may require. On hearing said application the court may dismiss it, or order a more specific statement, and where such more specific statement is ordered, and not furnished, the court may enter a non suit or judgment by default as the case may require. 32.

1424. Rules for a more specific statement of plaintiff's claim, and for specification of all special matter of defence, and for a more certain and specific statement of the defence, on fifteen days notice, shall be of course, in both assumpsit and trespass. 16.

1425. (Wherever there has been an appearance of the defendant, including appeals, 13, 17, 23, 28, 30, 35, 36, 42, 46) rules to declare or plead may be entered in the prothonotary's office at any time after the return day of the writ, and on failure to declare or plead within fifteen days (except in assumpsit and trespass, 16) (five days, 29) (ten days, 6, 33, 40, 50) (first Monday of any month, 14 days distant, 36) (fourteen days, 39) (thirty days, 26, 38, 46, 49) (twenty days, 9, 22, 41, 48) (six weeks, 34, 44) after written notice so to do, served upon the adverse party or his or her attorney of record, 24 (with a copy of the declaration or statement, 12, 20, 26, 32) (a second rule to plead, etc., in two days may be entered, and if this also be not complied with, 24) the prothonotary shall, on motion in writing, enter a judgment of non pros against the plaintiff for want of a declaration or statement, 11, 20, 43, or against the defendant for want of a plea, 6, 9, 10, 16, 18, 22, 27, 28, 30, 35, 36, 37, 38, 39, 40, 41, 42, 48, 50, 51, or at the request of the plaintiff, enter a plea, 15, 43, and place the case on the trial list, 8 (saving to the defendant the right to plead specially at any time before trial. 46, 49). But the court or any judge thereof may enlarge



the time to declare or plead on cause shown, 1, 2, 5, 7, 12, 14, 17, 19, 20, 21, 24, 26, 33, 45, 46, 49 (reasonable notice of the intended application having been given to the opposite party, 13, 23, 44) and judgments by default may be opened and set aside, at the discretion of the court, when deemed necessary for the purposes of justice. 29, 32, 34.

1426. In all actions other than assumpsit, rules to declare, state, describe and plead, may be entered during any term, returnable on the third day of the next term, when the term continues one week, and on the second Monday of the term, when the term is for two weeks; and on failure by the party to declare, state, describe or plead, as by rule required, judgment or non pros may be taken, as the case may be, and the entry of any such rule in the Watch Book during term time shall be notice to the opposite party in all cases where the party upon whom the rule is entered is in court. Said rules in all cases to be entered by the prothonotary upon his docket. 26, 34, 44.

1427. In cases not affected by the Procedure Act rules to declare or plead within ten days may be entered, and on failure to comply therewith, a judgment or non-suit will be entered, subject to the order of the court for opening, setting aside, or taking off the same. In like manner, rules to reply, rejoin, etc., may be entered, or on application to the court, within such time, and on such notice, as may be proper in each case. 32.

1428. Upon return being made of any rule to declare or plead, accompanied by an affidavit that the adverse party has no attorney of record, or bail or other surety upon whom notice thereof can be served, and does not reside in the county, setting forth the place of residence, if known, or that the place of residence is unknown to the party taking the rule, the court shall, upon motion, grant a second rule, making such special order of notice, by publication or otherwise, as the case shall require; and upon return being made of such second rule, with due proof that the order of notice has been complied with, judgment or non-suit, as the case may be, shall be entered as in other cases, and subject in like manner to any order of the court for opening, setting aside, or taking off the same. 7, 38.

1429. If the arr or statement is not filed within three days after the return day, rules to state, declare and plead, may be entered at any time, and on six weeks notice (thirty days

notice with a copy of the rule, 25) thereof to the adverse party or his attorney, and on failure to state, declare or plead, a judgment of non pros or by default, as the case may require, shall be ordered, 4, but no such rule shall be entered until after the return day of the writ, and an appearance by the defendant. 25.

1430. If the defendant be in prison on a *capias*, and no appearance be entered on the record, the plaintiff on filing his declaration may on or after the return day of the writ, obtain a rule on the defendant to plead, and if no plea be entered at the expiration of fifteen days from the service of a copy of the rule, accompanied with a copy of the declaration, judgment may be entered for want of a plea as in other cases. 16, 42.

1431. Rules may be taken on motion, in term time, or be entered in the prothonotary's office in vacation, to plead, declare, etc., on or before the next term; and if such rule be not complied with, a second rule may be applied for to plead, etc., in two days; and if the second rule be not complied with, the proper judgment will, on motion, be entered by the court: Provided, that a rule entered in vacation shall be served on the opposite party, or his attorney, at least fifteen days before the return day thereof. 47.

1432. In cases of *quo warranto*, rules to plead, demur and reply, etc., in ten days, or judgment, may be taken (on a regular motion day, 11) (in term time, 26, 45), and if the rule be not complied with, judgment may be moved for in court. 10, 11, 26, 34, 40, 45.

1433. Rules for all pleadings, answers, etc., in *quo warranto* and *mandamus* may be taken in like manner, and so far as the nature of the case admits, with like effect as rules in other cases. 17, 36, 44, 50.

1434. If the plaintiff file his *narr* or statement on or before the third day of the term to which the process is returnable, or within three days after the return day of the writ, he shall be entitled to a plea on or before the third day of the next succeeding term, or to judgment by default, without the entry of a rule to plead. 4, 25.

1435. At the term following the return day of process when the writ has been served, or an appearance entered for the defendant, and the *narr* filed at the making up of the trial list for such

term, the defendant's plea shall be required, and in default thereof the plaintiff shall be entitled to judgment. 22.

1436. Where the declaration or statement is on file at the time the defendant appears (in the action of trespass, 30) (in any action except ejectment, 11), he shall plead thereto within (fifteen days, 17) (thirty days, 10, 30) after the return day (or within fifteen days after notice of such filing and a demand for a plea, 11), and in default thereof the plea may be entered by the prothonotary, 10 (upon the suggestion of opposing counsel, 17) (upon order of the court, on motion, 30) and the cause put down for trial. 11, 17, 30.

1437. Except as herein otherwise provided, if the plaintiff file his narr or statement, on or before the day to which the process is returnable, or within three days thereafter, he shall be entitled to a plea within thirty days after the return day; and in default thereof the prothonotary shall enter the plea of the general issue, saving, however, to the defendant the right to plead specially at any time before trial. 46. 49.

1438. Where a declaration is on file at the time the defendant appears he shall plead thereto without further notice, or judgment may be taken in default of a plea on motion. When an affidavit of defence is filed, the same shall be considered as a plea at length, and the defendant may plead the general issue, and specially the matter set forth in the affidavit of defence filed; or where he neglects so to plead, the plea may be entered by the opposite party, or the prothonotary, and the cause put down for trial. 50.

1439. In actions of assumpsit and trespass (and all other actions except ejectment, 47) the defendant shall file his plea within fifteen days after the return day of the writ, if the statement was filed fifteen days before the return day. If not, the defendant shall file his plea within fifteen days after notice that the statement has been filed, 45, and in default thereof the prothonotary in all cases shall put the cause at issue by entering the short general issue plea for the defendant, 16: Provided, however, that the defendant shall not be prejudiced by the form of the plea so entered, but thereafter, on leave of court given, may alter or amend the same. 47.

1440. Every case over fifteen months standing from the first day of the term to which suit is brought, in which a narr

shall have been filed six months, a judgment for want of a plea shall be entered by the prothonotary, as of course. 33.

1441. All pleas, rules and judgments shall be entered by writing filed, 15, and the "watch book" is hereby abolished. 20.

1442 Any plea in order to have the effect of putting in issue the execution of the writing on which the claim is founded, shall be drawn out at length and filed, and shall be verified by the affidavit of the party, or some one for him. 24.

1443. Any defence, legal or equitable, that might heretofore have been specially pleaded, or given in evidence under equitable pleas, shall be admissible under the plea of the general issue, upon notice given at least (ten days, 1, 32) (fifteen days, 2) (twenty days, 8, 23) (thirty days, 26) before the day set for trial, 1, 8, 23, 26, 32: Provided, that the plaintiff shall at least twenty days before that time have required the defendant or his attorney, in writing, to give such notice. 2.

1444. Such notice of special matters of defence shall contain a specific averment of facts sufficient to constitute a good legal or equitable defence, 1, 2, 8, 23, 26, 32, and shall be clearly and concisely stated. If there are several defences they shall be separately stated and numbered. 16, 39.

1445. Copies of such notice shall be filed of record, and also served on the plaintiff or his attorney of record at least (ten days, 1, 32) (twenty days, 8) (thirty days, 26) before the day set for trial. 1, 8, 26, 32.

1446. In default of such notice the defence shall be confined to matters strictly admissible under the plea filed. 1, 2, 8, 10, 16, 26, 32.

1447. In lieu of special pleas, the defendant may file with his plea in bar "special matter of defence", and give evidence of any facts constituting a defence, which he might have pleaded specially, and which he has set forth clearly and concisely in the special matter. If there are several distinct grounds of defence, they shall be separately stated in paragraphs consecutively numbered. Thus, for a form:

A. B. vs. C. D.

The defendant by E. F. his attorney says that he did not promise, etc., (or pleads payment, coverture, fraud or the like) and further answering the complainant herein, in lieu of special pleas and by way of special matter of defence:

*First.* For a further defence to plaintiff's action (or to the first alleged cause of action) denies, etc.

*Second.* For a third defence to said first cause of action, the defendant alleges (set forth the new matter).

*Third.* For a set-off to the plaintiff's claim, the defendant alleges, etc. 16, 39.

1448. If special matter is filed with the plea, or before the cause is on the list for trial, the plaintiff shall take notice of it. If filed after the cause is on the list it must be verified, and notice given the plaintiff. And special matter shall not be filed within two weeks of the first day on which the cause might be tried, except by consent of the plaintiff, or by leave of the court or of the judge in vacation, obtained upon notice to the plaintiff, and upon an affidavit showing an excuse for the delay, or that unnecessary injustice will result if leave to amend be refused. If leave is granted (unless on the trial) a copy of such special matter shall be forthwith served on the plaintiff or his attorney of record, in the manner prescribed for the service of notices. 39.

1449. The court may at any time, on motion, for reasons shown, order the defendant in explanation of his plea or pleas, to disclose the specific matters of his defence by notice similar to the notice of special matter, and subject to the same rules. 8, 24.

1450. When the defendant pleads set-off or defalcation (and no affidavit of defence is filed, 4) unless the matter to be set off be fully and particularly set forth in the plea, he shall file with his plea a specification of the intended set-off (under oath, 50) and he shall give no evidence of any matter of set-off not particularly mentioned either in the plea or specification, 4, 8, 10, 16, 39, 40, 42, and such specification shall be deemed admitted unless the plaintiff denies it by affidavit filed with his replication. 33.

1451. Where set-off, payment, or payment with leave is pleaded, the plaintiff may enter a rule on the defendant to furnish him with a copy of the account, or specification of the claim or matter, to be offered in evidence under said pleas; and if the defendant neglects to furnish the same within twenty days (fifteen days, 14) after service of the rule, he shall not be permitted to give evidence thereof on the trial, 5, 6, 14, unless it would have been admissible under a general issue plea. 22.

1452. No special matter, not strictly admissible under the pleadings, shall be admitted in evidence, unless notice thereof shall have been given in writing to the opposite party or his attorney, at least ten days before the trial. 29.

1453. Where there is leave under a general plea to give the special matter, fraud, want of consideration, particular payment or defalcation, in evidence, or the defendant pleads set-off and does not set out the specific matter in his plea, a specification in writing of the special matter, fraud, want of consideration, payment, defalcation or set-off, if demanded in writing, shall be given to the plaintiff or his attorney within twenty days (a reasonable time, 27) (fifteen days, 7) (thirty days, 4, 13, 34, 38, 44, 46, 49) after such demand (ten days before day of trial, 1) otherwise no evidence shall be admitted of such special matter on trial. 1; 4, 8, 11, 12, 13, 19, 20, 23, 25, 27, 30, 34, 44, 45, 46, 49, 51. But if there is no demand, such evidence may be given in evidence under the general pleas without notice. 7, 38.

1454. Where the defendant has filed a general plea, either in assumpsit or trespass, the plaintiff at any time after the defendant's appearance, may have a rule on him to file a specification of the special matters which he intends to give in evidence, within fifteen days (twenty days, 48) after service; and the defendant shall on the trial be confined to the denial of the facts set forth in the plaintiff's statement, and the proof of the special matters specifically set forth in response to such rule. And if none be filed, to the denial of plaintiff's statement only. 37, 48.

1455. Where the defendant has pleaded the general issue, with leave to give the special matter in evidence, or to justify, he shall at least ten days before the first day of the term at which the cause is set down for trial, give notice of the special facts or matters on which he intends to rely; otherwise, he shall be confined strictly to evidence admissible on the general issue plea. 32.

1456. Where there have been mutual dealings between the plaintiff and defendant, in order to enable the latter on the general issue to defalk his account against the plaintiff's demand, or any part of it, he shall give notice at least ten days before the first day of the term at which the cause is set down for trial,

and at the same time furnish a copy of the account to be given in evidence. 32.

1457. When the defendant shall have added to his plea of the general issue, "with leave, etc.", it shall not be necessary for him to give any other notice of special matter, unless the plaintiff or his attorney shall, at least twenty days before the trial, demand in writing notice of the special matter or facts upon which the defendant intends to rely, and in such case if the defendant shall not, at least fifteen days before the trial, give notice of the special matter or facts on which he intends to rely, he shall be confined strictly to evidence admitted on a general issue. 21.

1458. The court, or a law judge thereof, may, in its discretion, enlarge the time for filing any specification of special matter, or permit amendments thereto, on such terms as shall be considered just. 24, 37.

1459. In the action of assumpsit the plea of the general issue shall be non-assumpsit. The defendant in the action of assumpsit shall be at liberty, in addition to the plea of non-assumpsit, to plead payment, set-off, and also the bar of the statute of limitations, and no other pleas. 30.

1460. In the action of assumpsit any defence may be made under the general issue which is not appropriate to the pleas of payment, set-off, or the statute of limitations; and in the action of trespass any defence may be made under the plea of not guilty. 12, 51.

1461. Under the plea of payment the defendant may give in evidence any equitable defence which the present practice in this State, as sanctioned by the Supreme Court, will warrant, if he will file with his plea a specification of the facts intended to be proved; otherwise he shall give no evidence under the plea except what will show actual payment or satisfaction. 16, 33, 39, 40, 42.

1462. A defendant shall not be allowed, under the plea of payment, to give in evidence that the bond or specialty sued on was obtained by fraud, or a suggestion of falsehood, or a suppression of the truth, or without any or a sufficient consideration, unless at least ten days before the first day of the term at which the cause is set down for trial, he gives notice of the matter upon which he intends to rely. 32.

1463. The plea of non-assumpsit in the action of assumpsit, shall put in issue the whole of the plaintiff's statement, except such averments as by Act of Assembly or rule of court are admitted, and entitle the defendant to prove on the trial, any matter of defence legal or equitable, except payment, set-off, or the bar of the statute of limitations. 37.

1464. In actions of assumpsit the plea of non-assumpsit shall operate only as a denial in fact of the express contract or promise alleged, or of the matters of fact from which the contract or promise alleged may be implied by law. All defences not strictly admissible under the plea, except payment, set-off, or the statute of limitations, shall be embraced and set forth in the special matter of defence to be filed with the plea. 10, 33. For instance :

Defences in abatement.

Defences denying the character in which any party is described on the record.

Defences denying the execution of any written instrument on which the suit is founded, including matters which make it absolutely void, as well as those which make it voidable.

Defences denying the drawing, or making, or endorsing, or accepting, or presenting, or notice of dishonor of a bill of exchange or promissory note.

Matters in confession and avoidance, including not only those by way of discharge, but those which show the transaction to be void or voidable in law, as infancy, coverture, release, performance, illegality of consideration, fraud and covin, and tender. 16, 40, 42.

Defences which by the rules of court were inadmissible under the general issue, and to be set forth by special plea in denial or in confession and avoidance. 39.

1465. The only plea in the action of trespass shall be "not guilty", 30, and it shall entitle the defendant to prove any matter of defence, legal or equitable (competent under any plea at common law, 37), usually given under that plea in this State. 16.

1466. In the action of trespass the plea of not guilty shall operate as a denial to the following intent and effect only :

In actions *quare clausum fregit* as a denial that the defendant committed the trespass alleged in the place mentioned.



In actions *de bonis asportatis* as a denial that the defendant committed the trespass alleged by taking or damaging the goods mentioned.

In actions formerly on the case as a denial only of the breach of duty or wrongful act alleged to have been committed by the defendant.

In actions formerly of trover as a denial of the conversion only, and all other defences shall be embraced and set forth in the special matter of defence to be filed with the plea. For instance :

A denial of the plaintiff's possession or right of possession of the locus in quo.

A denial of the plaintiff's property in the goods.

Justification under a landlord's warrant or a legal process.

Matters in confession and avoidance.

Justification in slander and libel. 16.

And generally defences which under the rules of court were inadmissible under the plea of not guilty. 39, 42.

1467. The plea of *non detinet* shall operate as a denial of the detention of the goods by the defendant, but not of the plaintiff's property therein, and no other defence than such denial shall be admissible under that plea. 16, 39.

1468. All matters in confession or avoidance of any action shall be specially pleaded, and the general issue plea shall only be taken to deny the express contract, act or nonfeasance of defendant charged in the declaration ; and all other allegations not specifically traversed or denied shall be taken as admitted. Thus "*non cepit*" in *replevin*, or "*not guilty*" in *trover*, *trespass* or *case*, shall not be taken as a denial of the title, possession, etc., of the plaintiff, but only of the taking, conversion, negligence or other nonfeasance of the defendant charged in the declaration. And thus in *assumpsit* such defences as infancy, coverture, release, payment, performance, illegality of consideration, false representations, and other defences, must be specially pleaded. 50.

1469. The plea of *non est factum* shall operate as a denial of the execution of the deed in point of fact only, and all other defences shall be specially pleaded. 6.

1470. Where the defence of the defendant is that properly raised by the plea of *liberum tenementum* prior to the *Proced-*

ure Act of 1887, he shall file with his plea an abstract of his title as required in ejectment, and the plaintiff shall (within fifteen days, 17) (before the first day of the next term without notice, or within thirty days, 18, 36, 50) after notice of filing such abstract, file an abstract of his title as required in ejectment, together with a specification of so much of the defendant's title as he denies. The defendant shall within (fifteen days, 17) (twenty days, 50) (thirty days, 18, 36) file a specification traversing such new matter contained therein as he denies. So much of either party's title as is not denied shall be deemed to be admitted. 17, 18, 36, 50.

1471. The rules as to the survey, etc., shall apply to actions of trespass quare clausum fregit, where the plea of liberum tenementum would have been entered. 18, 36, 50.

1472. Where the title to land is in dispute the rules herein provided for actions of ejectment shall be applicable to actions of trespass. 17, 37.

1473. Where the defence will not be liberum tenementum it will be sufficient answer to the rule to file an abstract of title to state that "the defence will not be liberum tenementum". 47.

1474. Where the plaintiff's attorney shall endorse on his declaration "defendant to plead at length", or shall take a rule on the defendant to plead at length, no short plea will be received, and if in such case the defendant shall not set forth his plea in due and legal form, the plaintiff may take judgment as for want of a plea. 28, 35, 36, 39, 42, 48.

1475. If the defendant has pleaded at length, (in all actions except assumpsit and trespass, 37) the replication and all subsequent pleadings shall also be at length, and short entries shall be considered nullities. 28, 35, 36, 37, 39, 42.

1476. Where the defendant not being required to plead at length by endorsement on the declaration or by rule, shall put in a short plea, neither party shall insist upon the other drawing out his pleadings at length, nor demur on account of informality. 6, 28, 36, 37, 39, 42, 48.

1477. No dilatory plea will be received unless verified by affidavit. 4, 5, 6, 7, 9, 10, 12, 14, 19, 21, 25, 27, 28, 29, 33, 35, 36, 37, 38, 41, 48, 50, 51.

1478. Dilatory pleas (including pleas in abatement and puis darrein continuance, 4, 7, 25, and the plea of non est factum, 7,

38), or any other plea intended to put in issue the execution of the writing on which the claim is founded, must be drawn at length and filed, (within four days after the service of the statement, 1) and must be accompanied by an affidavit, or other satisfactory evidence, that the facts stated in the plea are true, 1, 8, 11, 13, 15, 20, 22, 26, 32, 34, 40, 43, 44, 46, 47, 49 (and that it is not meant for delay, 23, 30) otherwise it will be stricken off. 17.

1479. No dilatory plea shall be received after a plea in bar, nor unless pleaded within fifteen days after the return day of the writ, unless by special leave of the court upon cause shown. 37.

1480. The following defences shall not be received unless verified by an affidavit "that the substance and matter of fact in the defence hereunto annexed is true":

- (a) Pleas in abatement and other dilatory pleas;
- (b) Pleas denying the character in which either party sues or is sued;
- (c) Pleas puis darrein continuance;
- (d) Pleas or special matter added on the trial, or after the cause is on the list for trial, 45;
- (e) Pleas denying expressly or by implication the execution, assignment, endorsement, or acceptance of a written instrument on which the suit is founded. 16, 39, 42.

1481. The statement shall be replied to by an "Answer", which shall contain a specific denial of each material allegation of the statement controverted by the defendant, together with the averment of any new matter constituting a defence or counter-claim; in setting forth such new matter the same rules shall be observed as are hereinbefore prescribed in respect to the statement; where the defendant seeks to rely upon any grounds as supporting a right of counter-claim, he shall state specifically that he does so by way of counter-claim. 3.

1482. The answer shall be filed within fifteen days after service of the statement, and a copy thereof shall be delivered to the attorney of the plaintiff, or if he has no attorney, to the plaintiff himself, within five days after such filing, in default of which the answer may be suppressed. Proof of delivery as aforesaid shall be by affidavit filed. 3.

1483. Except in actions for statutory penalties, and in actions against municipal and quasi-municipal corporations,

and in actions for damages resulting from the alleged negligence of the defendant, the answer shall be verified by affidavit. 3.

1484. Where the party to make answer is acting in a fiduciary capacity, or has been sued as heir, devisee, or terre tenant, an averment in his answer that he has made diligent inquiry, and is unable to say whether any given allegation in the statement is true or not, but that he believes the same to be untrue, shall be equivalent to a specific denial; in other cases if the defendant cannot say whether any given allegation in the statement is true or not, an averment in his answer to that effect, coupled with the further averment that he is informed and believes that the same is untrue, and expects to be able to prove it, shall be equivalent to a specific denial. 3.

1485. Every issuable fact alleged in the statement, and not specifically denied by the answer, shall be taken as admitted for all purposes; no denial shall be necessary as to damages claimed or their amount, but they shall be deemed to be put in issue in all cases unless they are expressly admitted. 3.

1486. If the party filing an affidavit of defence neglects or refuses at the same time to enter a plea, the prothonotary shall put the case at issue by entering a plea for defendant; but the defendant shall not be prejudiced by the form of the plea so entered, and may thereafter, with leave of court, enter other pleadings, or amend the plea put in for him by the prothonotary. 24.

1487. Where a declaration, statement or description is filed, and a defence made or (short, 25, 46, 47, 49) plea put in, the prothonotary shall, of course, put the cause at issue, 4, 8, 20, 25, 30, 46, 47, 49 (and enter the proper replication and other pleadings for that purpose, 7, 12, 51) but his act in this particular shall not prejudice the rights of the parties, 11, 13, 23, 26, 28, 34, 35, 41, 43, 44. Each party shall have it in his power to enter other pleadings, or demur, 12, 51, as he may deem most eligible: Provided, he give reasonable notice thereof to the adverse party, 9, to prevent surprise and secure a fair trial. 7, 38.

1488. When the defendant puts in a plea of payment, the prothonotary, as a matter of course, shall add the replication non solvit, issue, and rule for trial; and when he fails to do this and the matter is brought to the notice of the court, at the trial

or any other time, they shall order the same to be done at once nunc pro tunc, and the omission of the prothonotary to do so shall not be a cause for continuance when the cause is called for trial 2.

1489. Whenever the defendant in an action of assumpsit or trespass shall fail to plead to the action within fifteen days after the return day, as provided by Section 7 of the Act of 25th May, 1887, the plaintiff may file his motion in the office of the prothonotary, as of course, for the entry of a plea. And it shall be the duty of the prothonotary, upon proof before him that the defendant has had at least ten days notice of the entry of such motion, following the day of making the motion, to forthwith enter the general issue plea to such action. Thereupon the cause shall be considered at issue, and entitled to go upon the trial list. 7.

1490. In case no statement shall have been filed at least fifteen days before the return day of the writ, the motion may be filed with the prothonotary, and proceeded upon as aforesaid, at any time after fifteen days following the entry of an affidavit of defence in actions of assumpsit. 7.

1491. In actions of trespass said motion may be entered after thirty days have elapsed from the filing of the statement. 7.

1492. The plea of the general issue may be entered by the prothonotary at any time after answer, but such plea shall be without prejudice to the right of the defendant to include in his answer any matter pleadable in abatement. 3.

1493. In all suits or actions brought under the Procedure Act of 25th May, 1887, where the plaintiff has filed his statement of the cause of action, and complied with the requirements of said Act, the plaintiff may apply to the prothonotary to enter the plea of the general issue, who is hereby directed to enter the same in accordance with Section 7 of said Act, 25, but the defendant may, without prejudice, add any additional pleas allowed by law, subject to plaintiff's right of surprise. 24.

1494. Upon the plea of payment, nul tiel record, set-off, or the statute of limitations (the cause shall be deemed at issue as to such plea, 16, 39) the prothonotary shall, of course, put the cause at issue, by entering the proper replication for that purpose; but the act of the prothonotary herein shall not prejudice the party, who may enter other pleadings, or demur, as he

deems most eligible: Provided, to prevent surprise, he give reasonable notice thereof to the opposite attorney. 42.

1495. When a plea is entered by the prothonotary for the defendant, he shall upon the trial be confined to the proof strictly admissible under such plea, unless on or before the first day of the term at which the cause is set down for trial, he shall file a particular statement of the nature and character of any special matter of defence relied upon. 15.

1496. If there is any matter in the answer calling for denial, the plaintiff shall reply to the same within fifteen days after service of the answer upon him; the reply shall be governed by the same rules, except as to service, as are hereinbefore prescribed in respect to the answer. 3.

1497. No pleading after the reply, other than the joinder of issue, shall be pleaded without leave of court. 3.

1498. Upon a plea or pleas being entered and a replication or replications thereto, the prothonotary shall of course put the cause at issue, and enter a rule for trial; but his act shall not prejudice either party, who shall have it in his power to enter other pleadings or demur: Provided, to prevent surprise, and secure a fair trial, reasonable notice thereof shall be given to the opposite party or his attorney. 36.

1499. If the affidavit of defence denies no matter of fact averred in the plaintiff's statement, but sets up other matter of fact in bar, or in avoidance of the plaintiff's claim, the plaintiff shall reply thereto, either admitting or denying the same, under oath; and if no issue of fact be joined or raised, and the controversy becomes solely a question of law, the case shall go upon the argument list to be disposed of by the court without the intervention of a jury. 18.

1500. Either party may have the case put upon the argument list at any time after replication filed, and no matter of fact not set forth in the statement, affidavit of defence, or replication, will be considered on the argument of the case. No such case shall go upon the issue list for trial by jury, and if put on in violation of this rule will be stricken off by the court on motion. 18.

1501. Either party may apply to the court or to a judge to enlarge a rule to declare, plead, reply, etc. 16, 34, 42.

1502. If deemed faulty, the plaintiff's declaration may be

demurred to, or he may be ruled to file a more specific declaration. But no demurrer shall be filed except upon a certificate of counsel that in his opinion it is well founded in point of law, and supported by the affidavit of the defendant, his agent or attorney, that it is not interposed for delay. If the demurrer be overruled the defendant shall be ordered to plead within such time as the court may direct, and in default thereof, judgment may be entered for want of a plea upon præcipe filed in the office of the prothonotary. 20.

1503. No demurrer shall be allowed; any party may raise by his pleading any point of law, and any point so raised shall be disposed of by the judge who tries the cause at or after the trial, or either party may set the same down for hearing at any time before the cause is placed on the trial list upon the usual notice; if in the opinion of the court the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, counter-claim, or reply therein, the court may thereupon dismiss the action, or make such order therein as may be just. 3.

1504. In default of such requisites the statement or notice (may be demurred to, 1, 2, 16, 26, 39) (exceptions may be filed thereto with the reasons and the grounds thereof, 39) and a rule entered (as of course, 37) for a more specific statement. (On the demurrer the court may give final judgment or order a more specific statement or notice, 1, 2, 26) (or strike out the specification of special matter in whole or in part. 37). Where a more specific statement or notice is ordered and not furnished, the court may enter a non-suit or judgment by default, 1, 2, 8, 23, 26, 39, or a stay of proceedings until a proper statement is furnished, or that the plaintiff's evidence on the trial be strictly confined to the matters specifically set forth in his statement or mentioned in his bill of particulars, as the one or the other order may be just and appropriate to the circumstances of the case. 39. [In the 37th district an exception is allowed except in case of a refusal to strike out any special matter.]

1505. All demurrers shall set forth specially the grounds or reasons of demurrer, whether they be such as can be taken advantage of on general demurrer or not. 1, 8, 16, 21, 23, 39.

1506. All objections to informality of pleadings, or to matters appearing on the face of the record (which, if sustained,

would compel the opposite party to amend the pleadings or record) must be taken at least twenty days before the time of trial, and shall be disposed of by the court before the trial is called, and no plea of surprise (to any amendment rendered necessary by reason of such objections) will be entertained if such objections be not made until the time of trial: Provided, that either party shall be entitled to a bill of exceptions to the decision of the court upon said objections (which shall constitute a part of the records of the case) and which shall be the subject of review by the Supreme Court equally with all bills of exception granted on the trial. 29.

1507. All substantial as well as formal defects in the statement of plaintiff's demand (in pleading, 5) shall be deemed cured unless demurred to specially, 17, 50, and shall not be taken advantage of by motion in arrest of judgment (but the party may object thereto at the trial—subject to proper terms as to costs—by praying the court to charge the jury, that the evidence, proving only the facts averred in the pleadings, does not establish a sufficient claim or defence in law, 5, 14) and shall, if necessary, be amended nunc pro tunc. 9. On overruling or sustaining a demurrer, the court will, in their discretion, grant leave to amend, on such terms as may be imposed, unless it shall appear on the argument that the party has no better cause of action or defence than is set out in the particulars demurred to, in which case such judgment will be entered as the proceedings require. 5, 6, 14, 27, 28, 30, 33, 35, 37, 41, 43, 48.

1508. A rule may be entered in the prothonotary's office to strike out scandalous or impertinent matter, in either the plaintiff's statement or the defendant's notice or affidavit of defence, at the cost of the party averring the same. 8.

1509. If the plaintiff's demand be general assumpsit, not founded on any writing, he shall, if demanded in writing, six weeks before the term at which the cause is set down for trial, furnish to the defendant, or his attorney, within thirty days (ten days, 24) (twenty days, 8) thereafter, a specification, in writing, of the account and demand which he proposes to give in evidence, and rely upon at the trial, otherwise he shall be precluded from giving the same in evidence. 8, 20, 24, 25, 46, 49.

1510. The plaintiff shall, on request of the defendant,



thirty days before the time appointed for the trial of any cause, or before judgment asked for in court or before the prothonotary, give to him a copy of his account, or a statement in detail of his demand. Otherwise the defendant shall not be compelled to go to trial. 44.

1511. In all cases of appeals from the judgments of magistrates or justices of the peace (the pleadings and procedure shall be the same as in like causes commenced in court, 1, 2, 16, 22, 26, 37, 38, 39, 42, 43, after service of the writ by the sheriff, 8, 21, 32) (and judgment may be taken for want of an affidavit of defence as in other cases, 10, 15, 23) no declaration shall be required, but the prothonotary shall enter the plea of nil debet to the transcript, and put the cause at issue; and on the trial the merits on both sides shall be heard without regard to the form of action, 14, 24, 27, 28, 33, 35, 41, but the affidavit of defence shall be considered as a bill of particulars, and the defendant shall not be permitted to show any matters of defence other than those therein stated. 9.

1512. In all cases of appeals from justices of the peace, the transcript, when duly filed, shall be considered the declaration of the plaintiff, unless the defendant or his attorney (at the next term, 34) before plea pleaded, shall enter a rule upon the plaintiff to file a special narr or statement, 22, 25 (this rule, however, is not to be so construed as to authorize, on the trial of any such cause, the reading to the jury of any more of such transcript than may be sufficient to show the cause of action, 11, 13, 23, 34, 44, 45), and if no rule be taken or plea entered in thirty days, the prothonotary shall enter the plea of the general issue, saving, however, to the defendant the right to plead specially at any time before the trial. 46, 49.

1513. In all appeals from the judgments of aldermen and justices of the peace, the prothonotary, as soon as the transcript is filed, shall enter a rule on the plaintiff to deliver to the prothonotary, at his office, a statement of his claim, verified by affidavit, within fifteen days after service of the rule upon him, which rule, without unnecessary delay, shall be delivered to the sheriff, who shall serve the same within five days thereafter; the statement, when delivered to the prothonotary, and the subsequent proceedings and pleadings, shall be governed by the same

rules as are hereinbefore prescribed in respect to original actions. 3.

1514. In appeals from justices of the peace, aldermen, and city recorders, the transcript shall be the declaration, 4, and the prothonotary shall, at the time of filing the same, endorse thereon a plea for the defendant, which, in actions of trespass, shall be "not guilty", and in all other cases "non assumpsit": Provided, that this rule shall not prohibit the plaintiff from filing his declaration or statement, and copy of claim, at his election, and ruling the defendant to plead thereto, nor the defendant from ruling the plaintiff to file such declaration and statement. 48.

1515. It shall be the duty of the prothonotary, when an appeal is filed by either party to an action, to put the same at issue by the entry of the plea of payment, or if the action be trespass or trover the plea of not guilty. 4.

[Another rule of this district provides, however, that except in trover and conversion the plea shall be "nil debet".]

1516. No declaration or statement need be filed on appeals from justices of the peace, unless the defendant (make a written request of the plaintiff or his attorney so to do, at least fifteen days (twenty days, 29) prior to the time fixed for trial, 21, 29) enter a rule for a more specific statement than that contained in the transcript of the justice; and in such case, upon the filing of such specific statement, the defendant will be required to reply thereto by affidavit as in other cases. 8.

1517 In appeals from the judgments of justices of the peace, the plaintiff, if appellant, must file his statement (with the transcript, or within thirty days thereafter, 10) (before the first day of the next term, 42), or the prothonotary shall enter a judgment (of non-suit, 42) against him for costs. 10.

1518. If the defendant is appellant he may, within thirty days, rule the plaintiff to declare within fifteen days, and in default thereof, and upon due proof of service, the prothonotary shall enter judgment against the plaintiff for costs. 10.

1519. Where the defendant is the appellant he shall appear and put in his plea before the first day of the second term, otherwise the plaintiff, having filed his declaration ten days before, may on that day move for judgment, which will be granted for the amount of the judgment of the justice, with interest. 42.

1520. In all cases of appeals from justices of the peace, the issue shall be raised by a declaration for money had and received, and the plea of non assumpsit thereto; and the cause shall be tried on the merits without regard to form. 7.

1521. In all appeals where the plaintiff shall file a statement of his claim, showing that the same is for wages of manual labor alone, the prothonotary shall immediately enter the plea of non assumpsit. 10.

1522. Where a judgment entered on a warrant of attorney is opened, the issue shall be in debt as though no warrant of attorney had accompanied the obligation upon which it was entered, and suit had been brought thereon. Upon the trial of the issue, unless the execution of the bond, note or other obligation, is denied in the petition to open the judgment, it shall be admitted without proof of execution. Other facts set forth in the petition to open the judgment, or in the answer, shall be taken to be admitted on the trial, unless denied in the answer or the replication. Where the defence set up is matter arising since the judgment was entered, or that does not affect its validity, a scire facias may be directed to issue, to which defendant shall plead as in other cases. 17, 50.

1523. In all cases where a judgment is opened generally, without terms, the affidavit upon which said judgment is opened shall stand as a declaration, to which the plea of non assumpsit shall be entered by the prothonotary, of course, and the affirmative of the issue shall be with the defendant in the opened judgment. 34.

1524. No change shall be made in the pleadings in any case by reason of the payment of money into court, nor shall that amount be given in evidence on the trial as a payment, but after verdict recovered, the sum paid, with accruing interest thereon, if equal to or greater than the sum recovered, shall be deemed a payment thereof, and satisfaction accordingly entered; or if less, shall be a payment pro tanto, and judgment rendered for the residue only. 6, 18, 28, 35, 36, 37.

1525. Where money is paid into court, the defendant shall plead such payment in the following form:

“ A. B. vs. C. D.

“ The defendant by \_\_\_\_\_, his attorney, says that the plaintiff ought not further to maintain his action, because the

defendant now brings into court the sum of \$ , ready to be paid to the plaintiff; and that the plaintiff's claim with interest does not exceed the said sum, and this he is ready to verify; wherefore he prays judgment if the plaintiff ought further to maintain his action."

And if the plaintiff elects to proceed to trial he shall reply "that his claim with interest exceeds the said sum of \$ deposited in court in respect thereof". 16, 39.

1526. When a defendant pays money into court, he shall at the same time plead the fact specially, that he has paid the full amount of plaintiff's claim, debt, interest and costs, to which the plaintiff in declining to accept the tender shall reply. And if on the trial the amount so deposited is found by the jury to be equal to or greater than the plaintiff's just demands, the verdict shall be generally for the defendant. But if the sum admitted to be due is less than the plaintiff's just demand, the verdict shall be for the plaintiff, clear with all costs. 42.

1527. When an additional plea is entered in vacation, in a cause which is upon the trial list, notice thereof shall be given (ten days before the first day of the term, 7, 11, 45) (fifteen days before the first day of the week, 23) at which said cause is set down for trial. 7, 11, 23, 45.

1528. None of the requirements of these rules touching the statement, answer or reply, shall be dispensed with by agreement, or be deemed to be waived by implication, and the prothonotary shall report to the court any case in which such requirements have not been complied with. 3.

1529. The verification of the pleadings shall be by the affidavit of the party, or if the party be a firm, by one of the firm; or if there be several parties united in interest and pleading together, by one at least of such parties; but if the verification be by one of the parties on behalf of all it shall so state. otherwise it may be treated as the individual verification of the person making it; the verification may also be made by the agent of the party, if all the material allegations of the pleading be within his personal knowledge, but then the fact of the agency, and the reason why the verification is not made by the party, shall be stated; the verification may also be by a person in interest, though not a party, on similar conditions; no pleading, verified as aforesaid by a party, shall be used in a

criminal prosecution against such party as proof of a fact admitted or alleged in such pleading. 3.

1530. The issue, or question of law or fact, to be tried in every action, shall be made to appear in and by the pleadings and statements, and no other issue shall be proved or made on the trial of the cause: Provided, however, that the parties, by their attorneys of record, may agree upon and file a written specification of the issue or issues of law or fact, or either, to be tried and determined; but no other cause of action, nor any other facts, shall be proven or shown by the evidence on the trial, than such as are set forth and contained in the plaintiff's statement and the defendant's notice, or such as may be properly admissible for the defendant under his plea filed. 8.

#### POINTS RESERVED

[See Trials.]

#### PRACTICE

[See Bills of Particulars, Pleading and §§ 16, 17, 19, 24-27, 75-79, 82, 85-87, 92-98, 101, 102, 126, 133, 134, 279-284, 286-288, 646-648, 1069 and 1075.]

1531. In all cases where the præcipe for the commencement of a suit shall state the action to be brought "for use", it shall state for whose use the suit is brought, otherwise (the prothonotary shall not issue the writ, 18, 28, 33, 35, 36) judgment of non pros may be entered on motion, 5, unless within five days the cestui qui use be named upon the record. 24.

1532. The prothonotary shall obey no order or præcipe unless given by a judge or attorney of this court, or by a party to the proceeding. 22.

1533. The prothonotary shall not receive or enter of record any order granted by the court unless it is delivered to the prothonotary, or one of his clerks, in open court, or a special order directing the same to be filed is entered thereon, signed by one of the judges of the court. 5.

1534. All orders and decrees shall be prepared by the counsel obtaining the same (on a separate sheet or slip, 39) and submitted to the court for approval, 16, 25, and when allowed

shall be entered of record by the prothonotary. 8, 9, 14, 20, 22, 27, 36, 39, 41, 46, 49.

1535. All orders and decrees shall be signed by a judge of the court. 21.

1536. The clerk must record at large all proceedings in which any action, order, judgment or decision is made by the court. 51.

1537. When an order, decree or rule is of course, the prothonotary shall make the necessary endorsements and entries: Provided, that he shall not be required to enter any order, decree or rule, whether it be of course or granted by the court, without payment of the legal fee therefor, nor to enter any final order or decree, without payment of all officers' fees accrued in the proceeding 22.

1538. The foregoing rules relative to the form, structure, verification and effect of the complaint, answer and reply, shall apply to petitions on the law side of the court for any kind of relief, except libels for divorce, and to the answers thereto and the replies; the prayer for relief shall be so framed that the word "granted", without more, will cover all the relief sought; if the ultimate relief is multiple, the different kinds shall be distinctly stated in separate paragraphs, numbered consecutively. 3.

1539. Every citation, order, rule, or other process requiring further action of the court, shall, in the first instance, command the defendant or other person against whom it is granted, to appear and answer its exigency.

On the back of it shall be endorsed the following notice:

To the within named (here insert the name of the party to be served) you are hereby notified and required within twenty days from the service hereof on you, to cause an appearance to be entered for you; and also, to make answer under oath or affirmation, in writing, of the nature, character, and extent of the defence, if any you have, to the within (rule or citation, as the case may be, of complaint) of the within named complainant (here insert his name) and to observe what the said court shall direct.

Witness my hand [here insert date of notice, and name and place of business of plaintiff's attorney].

NOTE.—If you fail to enter said appearance, and make said answer in the proper office in said twenty days, you are liable

to have the complaint taken pro confesso, and a judgment or decree entered against you in your absence. 35.

1540. All petitions, remonstrances and other applications to the court, must be presented by the party in interest personally, or by an attorney of record of the court, whose name must be endorsed thereon; and no præcipe directed to the prothonotary, and no account presented for confirmation, will be recognized unless it is presented and signed by the party in interest personally or by an attorney of record of the court. This rule applies to the entry and conduct of amicable actions, and to the satisfaction of judgments, unless satisfaction is entered by virtue of a special power of attorney. 12, 51.

1541. All issues awarded by or certified to the court for trial, shall be entered upon the appearance docket immediately after being ordered or certified, 14, 30, 37, 48, and as soon as a plea is entered, shall be placed on the issue docket as other causes. 5.

1542. All feigned issues and cases stated shall be regularly entered as other actions. 45.

1543. In amicable actions the statement and answer, or case stated, shall be filed with the agreement, or the action shall not be entered. 3.

1544. Mechanic's claims shall be kept in the Mechanics Lien Docket, and all proceedings relative thereto shall be entered in the same docket, and entitled as of the same term and number. 1, 8.

1545. Alias and pluries writs, writs of execution, and scire facias to revive judgments, writs of scire facias on mechanic's liens and against garnishees, and all subsequent entries relating to any cause, and all ancillary proceedings, shall be entered in the same docket, and entitled to the same term and number as the original action or proceeding whereon they are founded. 1, 6, 8, 21.

1546. When issues of law and fact are joined in the same cause, the former shall be first disposed of, unless otherwise ordered by the court, and, in the meantime, the cause shall be placed only on the argument list. 7, 36, 38.

1547. Before a party having a judgment or award of record unsatisfied, shall take an exemplification thereof for the purpose

of collecting the same out of the State, or by transfer to another county, he shall pay to the prothonotary all the officers' fees and other costs, not coming to himself, remaining unpaid upon the judgment. Before delivering the exemplification for any other purpose, the prothonotary, if not satisfied thereof, shall require the party demanding the exemplification to state the purpose upon affidavit. 36, 40.

1548. In actions against one or more of several obligors, copartners or promissors, or the endorsers of promissory notes, where one of the defendants files an affidavit of defence admitting a certain amount to be due as his individual debt, and the plaintiff takes judgment against him for this amount, or if one or more of several co-defendants suffer judgment to go against him or them for want of any, or of a sufficient affidavit of defence, the judgment so entered shall not be a bar to further proceedings in the same suit against the other defendants. 21, 27, 28, 33, 35, 50.

1549. Where the answer denies a part only of the plaintiff's demand, the plaintiff may proceed to trial for his whole demand, or take judgment for the part not denied, without prejudice to his right to proceed to trial for the balance; if in the opinion of the plaintiff the answer is not sufficient, he may enter a rule of course on the defendant to show cause why judgment shall not be entered for want of a sufficient answer. 3.

1550. Whenever judgment shall be opened upon application of the defendant, it shall be the duty of the plaintiff, on or before the second Monday of the next term, to make application for an issue, whereupon the court will award a feigned issue in such form as may be necessary. 13.

1551. The prothonotary shall keep a book, to be called a plea book, in which the defendant, his agent or attorney, shall enter the names of the parties, the number and term of the cause, the plea he wishes to put in, and the day of entry. Within ten days thereafter the prothonotary shall transcribe from that book, upon the proper record or docket, the plea so entered. 12, 51.

1552. The following rules are of course, and need not be allowed, but may be entered in the office on the order of an attorney :



(A.) Peremptory rules:

Rule on counsel, in an action at law, to file his warrant of attorney.

Rule on the sheriff, after the return day, to return a writ.

Rule to file an affidavit of defence.

Rule on garnishee to answer interrogatories.

Rule on plaintiff to file interrogatories.

Rule on justice to return the certiorari and record.

Rule to take depositions, or for a commission.

Rule on respondent in divorce to answer.

Rule to file an abstract of title.

Rule to declare, plead or reply.

Rule to furnish a bill of particulars.

Rule to file a counter affidavit.

(B.) Rules to show cause, returnable as prescribed by the rules of court:

Rule to show cause why a judgment should not be entered for want of a sufficient affidavit of defence.

Rule to show cause of action and why the attachment should not be dissolved.

Rule to show cause why judgment should not be reversed.

(C.) Rules to show cause, stipulating fourteen days notice:

Rule on garnishee to show cause why he should not make a more specific answer.

Rule on garnishee to show cause why judgment should not be entered by default for not making more specific answer.

Rule on garnishee to show cause why judgment should not be entered for amount admitted in his answer.

(D) Rules to show cause, to be heard on the next court day:

Rule to show cause why the writ should not be quashed (for matter appearing on the record).

Rule to show cause why the service should not be set aside (for matter appearing on the record).

Rule to show cause why the sheriff's return should not be quashed.

Rule to show cause why appeal should not be struck off.

Rule to show cause why security should not be struck off.

Rule by an attorney to show cause why he should not withdraw his appearance.

Rule to show cause why rule to declare, plead, etc., should not be struck off.

Rule to show cause why pleas, etc., should not be struck off.

Rule to show cause why a more specific bill of particulars should not be furnished.

Rule to show cause why judgment should not be set aside. 39.

1553. While jurors are in attendance upon the court, business which does not require their aid will not be heard, excepting (at the commencement of each session, 34) on Monday of each week, unless otherwise required by law, rule of court, or other sufficient cause. 15.

1554. Reasonable notice of an application to stay proceedings must be given to the opposite party, or his attorney of record. 14, 30.

1555. The powers and authority of the court in banc may be exercised by the judge at chambers in vacation, in the following instances :

1. In awarding subpoenas in divorce, and in all applications which by Act of Assembly or rule of court may be made to the judge at chambers.

2. In granting rules to show cause respecting any matter depending in court, in all cases where the court itself might do so, returnable into court, except where an Act of Assembly or rule of court prescribes that the application shall be made "to the court in term time", or "in open court".

3. In enlarging the time to declare or plead ; to answer ; to file exceptions ; to close testimony ; to put in bail ; or to do any other act or thing required by rule or notice to be done, within a limited time pursuant to a rule of court, or in the usual course of practice.

4. In approving sureties or bail.

5. In motions for preliminary injunctions.

6. In staying execution until the fourth day of the next term unless an earlier day be specified. But no execution regularly issued will be stayed until after a levy has been made, nor unless a copy of the petition for the stay shall have been served

on the plaintiff's attorney, with a copy of the judge's summons, forty-eight hours before the time specified in the summons for the hearing.

7. In staying proceedings:

(a) In a cause settled;

(b) Where an attorney is proceeding in a cause against the wishes of his client;

(c) Until the costs of a former action are paid;

(d) On irregular judgments;

(e) On judgments entered by default, or in pursuance of rules, or on warrant of attorney to confess judgment, where a case for relief is shown.

8. In hearing objections to any writ, rule, or order issued, taken or applied for, as being unauthorized or irregular.

9. In hearing applications for relief under the process, rules, or orders of the court, where delay would be prejudicial. 39.

10. In motions for leave to enter judgment on warrant above ten years old. 16.

1556. An order at chambers will be made, in cases where notice is necessary, upon reasonable notice to the adverse party or his attorney, or upon a judge's summons, addressed to the attorney of the adverse party, requiring him to attend before the judge at a time specified, to show cause why the order applied for, to be succinctly described, should not be granted. In staying execution or proceedings; on objections to any writ, rule, or order; and in applications for relief against any process, rules or orders of the court; a judge's summons shall be obtained. When an order is made, notice of it must be given to the party or person to be affected by it. 16, 39.

1557. An order made at chambers shall be binding until the next sitting of the court, when, if acquiesced in, it shall stand as the order of the court. If any party is dissatisfied therewith he may then question its validity; or, showing sufficient grounds, apply to have the order rescinded or modified, and to set aside proceedings which have been taken under it. 16, 39.

1558. Any judge of the court may in vacation under special circumstances, by his order, enlarge the time for putting in, adding to, perfecting or justifying bail, or for filing the declaration, plea, replication, rejoinder, or other pleadings in the cause; or for doing any other matter or thing required by rule

or notice of either party. 4, 10, 17, 40. He may also hear objections to any writ, rule or order which has been taken, or offered to be taken, and make his order thereon, which order shall be binding until the next term; and if not then objected to and rescinded by the court, shall stand in full force as an order of the court: Provided, that in all cases of applications for such purposes, reasonable notice shall be given to the adverse party or his counsel. 14, 18, 27, 28, 25, 36, 41.

1559. Whenever a judgment is entered by default, or in vacation in pursuance of rules, or when entered on a warrant of attorney or power to enter judgment, upon sufficient and satisfactory cause shown on oath or affirmation, he may stay all proceedings upon reasonable notice until the next sitting of the court. 4, 10, 33.

1560. An order at chambers shall stay an execution only until the day on which the court shall next sit, and the judge making the order shall require such security for the plaintiff as he shall think necessary. 22.

1561. No security or bail for stay of execution will be approved at chambers, no order staying any writ or process of the courts, and no rule to show cause why other writs or process should not be stayed, will be awarded at chambers, unless it appears that the plaintiff in such writ or process, or his attorney, has been notified of the intended application; and the time when and the place where it will be heard. If, however, neither the plaintiff nor his attorney can be found, and the necessities of the case appear to demand immediate action, upon proof of inability to give notice, security or bail may be approved, execution of writs may be stayed, and rules to show cause may be granted. Proof of such notice, or inability to give the same, shall appear from the written certificate of the counsel making the application, stating the facts, if the counsel be a practicing lawyer of the district. If, however, the counsel is not a member of the bar of this district, then such proof shall be made either by the affidavit of the client or of his counsel. 38.

1562. All applications to a judge in vacation to stay writs, open judgments, or for any other purpose, in any judgment or other issue or proceeding pending in court, shall only be heard on proof of reasonable notice, which shall not be less than twenty-four hours, having been given to the adverse party; and

the order of the judge shall set forth the fact that the adverse party was present by himself or counsel, or that there had been proof of notice as required by this rule. 24

1563. No judge's orders shall be made unless previous notice of the intended application, stating the time and place, has been given to the adverse party or his counsel. 10, 40

1564. Printed forms of petitions, bonds, etc., shall be used in all cases where they can be had, and in such cases written ones will not be received. Printed, or partly printed and partly written notices, etc., shall in all cases be good where written ones are required by these rules. 17, 50.

1565. On the third day of each term, when the term is for one week, and on the second Monday when the term is for two or more weeks, the docket of the last preceding term shall be called over, and in all cases where the plaintiff's declaration or statement was filed on or before the third day of that term, or within three days after the return day of the writ, if such declaration, writ or statement be necessary, he shall be entitled to the defendant's plea or a judgment; and at the same time (and also at the Saturday next after the second return day, 34) judgment may be taken by default of defendant's appearance in all cases of summons and scire facias, returnable to the term for which the court is then sitting, if the writ have been served according to the Act of Assembly, and the plaintiff have duly filed his declaration or statement, if required by law: (Provided, that judgment for want of an appearance may not be taken before the second term in cases of ejectment. If the defendant do not appear in ten days after the service of the writ agreeably to the 34th section of the Act of 13th June, 1836, and a declaration is duly filed as aforesaid, the prothonotary may enter judgment on or after the first day of the next succeeding term. 44). If, however, in any of the cases above mentioned, the plaintiff shall not take judgment, the court may at any time thereafter, on motion, direct such judgment to be entered. 34, 44.

1566. It shall be the duty of the prothonotary, immediately after every stated term of court, to carefully examine the record, and in cases requiring a declaration or statement, if none has been filed before or during the third term of the court after the service or execution of the writ, and the defendant's

appearance has been recorded, he shall issue a rule on plaintiff, without a præcipe, and at plaintiff's costs, to declare in ten days from service of the rule, and on failure to comply therewith shall enter judgment of non pros as of course. When a declaration is filed in pursuance of such rule, and no plea is entered within three months from the filing thereof, the prothonotary shall issue a rule on the defendant, and at defendant's costs, to plead in ten days from service of the rule, and on failure to comply therewith shall enter judgment against defendant as of course for want of a plea. When the plaintiff has filed his declaration or statement before the time herein mentioned for the issuing of a rule to declare, and an appearance has been entered for defendant, if defendant neglects or fails to plead within three months from the commencement of the third term after the service or execution of the writ, the prothonotary shall issue a like rule to plead, and enter a like judgment in case of default. 40.

1567. At the second Monday of each term, during the morning session, except when otherwise ordered, the docket shall be settled, at which time all affidavits and other papers required at such term, not otherwise provided for shall be filed, and appearances and pleas required, and judgments authorized at such term shall be entered: Provided, that judgment by default for want of an appearance may be taken on the last day of the term, when the writ is returnable on the day preceding such last day, and when the writ being returnable on the first day of the term, has not been served in time to entitle the plaintiff to judgment when the docket is settled. 22.

1568. In settling the docket it shall be called over by the prothonotary or some attorney designated by him, and shall not be overlooked by any other person. 22.

## PROCEDURE

[See Affidavits of Defence, Judgments, Pleading, Practice.]

**PROTHONOTARY**

[See Assessment of Damages, Records and §§ 238, 247-249, 394, 399, 450, 451, 506, 512, 519, 539, 658, 659, 673, 675, 676, 709, 711, 726, 761, 810, 811, 988, 991, 1097, 1098, 1181, 1182, 1187, 1190, 1226, 1237, 1255, 1256, 1258, 1259, 1262, 1267, 1272, 1274, 1275, 1284, 1311, 1364, 1366, 1368, 1421, 1486-1489, 1492-1494, 1498, 1531-1533, 1536, 1537, 1551, 1566, 1568, 1601, 1602, 1622, 1737, 1746, 1752, 1754, 1756-1760, 1762, 1769, 1770, 1778, 1785, 1787, 1793, 1795, 1799 and 1857.]

1569. The prothonotary's office shall be at the county town, and shall be kept open for the accommodation of the public during business hours. 7.

1570. The prothonotary shall keep a minute book, in which he shall make an entry of all the current business transacted at each session of the court, 2, 6, 15, 19, and a strict memorandum of all verdicts rendered. 37, 48.

1571. The prothonotary (shall keep in his office a copy of the printed rules of court and, 10, 16, 24, 40) shall record in a book all rules adopted by the court, and also note the time of the adoption thereof, 4, 14, 16, 28, 35, 40 (and shall furnish to the bar printed copies thereof, 10) and if any rule is repealed he shall make a note thereof, and when done, on the margin of the record where such rule is recorded. He shall also keep an index referring to all rules that shall be recorded, and also of all that shall be repealed. 2.

1572. The prothonotary shall give notice, by publication in the legal newspaper, of the adoption, amendment or rescission of any rule, the expense of the publication to be paid by the county. 2, 19.

1573. Whenever any (general) rule of court is established, or is amended or abrogated by another general rule of the court, the prothonotary shall forthwith cause the same to be printed and posted (on the board for Miscellaneous Notices for a period of four weeks, and give a copy thereof to every member of the bar upon application, 23), in a conspicuous place in his office, there to remain for the space of twenty days. 27.

1574. The prothonotary shall keep in his office during vacation, and in the court room during all sessions of the court, a rule docket, in which shall be entered by counsel all rules and judgments to which they are entitled without motion, in a

plain and legible manner, giving the number and term, with the names of the parties in each case. All of which the prothonotary shall enter in the proper docket and case day by day. 6, 37, 48, 51.

1575. The prothonotary shall make out in a book of convenient size, for the use of the court, a list of all causes set down for trial or argument at any court, and on said trial list shall note the pleadings and the date thereof, 18, 27, 39, 42, and on the argument list a full synopsis of the matter for argument, with the date of the granting of the rule or motion, and if the motion or rule be in a cause pending, shall note in the margin the names of the attorneys for and against the rule, if their names appear of record, and shall leave there sufficient blank space for all entries to be made by the court. 6, 37, 48.

1576. The prothonotary shall keep a book of convenient size to be called the "Trial List for the Bench", in which all causes regularly put down for trial at any term shall be set down with a brief note of the pleadings therein; and the prothonotary shall append to the list for any week his certificate that such causes were set down for trial in the manner and within the time prescribed by the rules of court; that they were published and a copy put in the office as required by the rules, and that they were at issue when set down, and such certificate shall be conclusive in regard to any cause which shall be at issue on the first day of the week for which it has been put down. 16.

1577. The prothonotary shall, in due season, make out, in a book kept for the purpose, for the use of the court, a list of the causes set down for trial at that term, and not countermanded in time, or stricken off by consent, specifying the names of the parties, number and term, kind of action, and the pleadings, together with such rules or orders as may be necessary to be known at the trial. 18.

1578. The prothonotary shall keep a book to be called the "Prothonotary's Minutes", in which, during the sittings of the court, he shall enter in full all general orders and decrees of the court, other than those required to be entered in the record of any proper suit or proceeding, and which shall include a sufficient minute of the meetings and adjournments of the several courts. 18.

1579. The prothonotary shall not, under any pretence



whatever, ask, demand or receive any fees under the denomination of compensatory fees, nor greater or other fees than is expressed or limited by Act of Assembly. He shall not charge or demand any fee or reward for any service or services other than those expressly provided by Act of Assembly, and shall not recover or take, by color of his office, any fee or reward, nor more than as allowed by law. 7.

### **PUBLICATION OF NOTICES AND WRITS**

[See Notices.]

### **QUO WARRANTO AND MANDAMUS**

[See Pleading.]

### **RAILROADS**

[See Condemnation Proceedings.]

### **REAL ESTATE**

[See Sales.]

### **RECORDS**

1580. The prothonotary shall not be required to enter upon the records any written paper which does not set forth the court, term and number of the original suit, 1, 8 (or of the writ of execution, 32, or the book or page in equity cases and cases in the trust docket to which said paper refers, 2) (unless the same appertain to the miscellaneous business of the court, 32) (and with a brief reference to the names of the parties, 11, 45); and no paper shall be received or filed unless the name of some member of the bar be endorsed thereon, 19, 23 (or the paper be presented by the party interested in the same, 11, 45) and a brief description of its nature. 7, 38.

1581. If the papers in a cause are mislaid or lost, and cannot be found when the case is called for trial, they may be supplied by (the) copies, 21, served upon counsel, or by other duly authenticated copies of the pleadings. 1, 8.

1582. The time (particular day and hour, 11, 23) of issuing all process (except subpoenas, 12, 25, 51) and of filing the præcipe, the pleadings and all papers in the cause, shall be (endorsed on the paper filed, 2, 8, 11, 12, 15, 19, 21, 29, 51) and distinctly marked by the prothonotary on the docket where the suit is entered, 1, 4, 6, 7, 10, 11, 12, 13, 14, 18, 20, 21, 22, 23, 25, 28, 29, 30, 33, 35, 36, 37, 38, 40, 43, 45, 46, 48, 49, 51, and no parol evidence shall be received to contradict such indorsement, 26, 34, 44 (in any collateral proceeding, 23) unless upon an allegation, verified by affidavit, of fraud, 11, or mistake. 45.

1583. When a paper is filed in court the prothonotary shall make a note thereof on the court minutes. 22.

1584. No entries shall be made on the dockets except by the proper officers, or with their express consent. 17, 37, 50.

1585. The entry of satisfaction (in full or in part, 11, 13, 16, 23, 25, 45, 46, 49) settlement, marking to use or discontinuance, may be made by the party or his attorney of record upon the docket, but such entries shall always be attested by the prothonotary or one of his clerks with the date of entry. In no other case (except the entry of appearance on the margin of the docket, 4, 11, 13, 16, 23, 32, 45, 46, 49) shall any attorney (or other person except the prothonotary, or his regularly authorized clerks, 4, 11, 13, 23, 34, 45, 46, 49) be allowed to make any entry on the dockets or other records of the court. 1, 4, 8, 11, 13, 16, 18, 20, 23, 25, 32, 34, 39, 45, 46, 49.

1586. The prothonotary shall keep the seal, records, books and indices in his office in proper order, in safe custody, and as the law contemplates. And except in cases of necessity, and upon the order of the judge of the court, he shall not take or remove them, or allow them to be taken out of their respective offices. He shall not allow said records, books, etc., to be mutilated and disfigured by cutting out or pasting in leaves or other papers, unless for good cause and with the approval of the judge. 7.

1587. The prothonotary shall permit no interlineations, or erasures, or other alterations of the records under his care, to be made without leave of the court, or a judge thereof. 4.

1588. The prothonotary shall keep a separate general appearance docket, wherein shall be entered all actions and pro-

ceedings of every kind assigned to the several terms respectively, 21, except mechanic's claims and proceedings thereon. 8.

1589. The prothonotary shall be responsible for the safe keeping of the records in his office, 10, 14, 18, 40, and shall not permit any person but a judge or an attorney of the court to handle or inspect the same. 6, 9, 22.

1590. No record or paper on file shall be taken from the office of the prothonotary without a written order of one of the judges of the court, 5, 8, 10, 17, 32, 33, 50 (or the consent of the opposite counsel, 6, 20, 25, 26, 37, 44, 46, 49) (for special cause shown at the time of the application, 1, 21, 39) stipulating for the return of the same to the said office within a specified time (five days, 2) (ten days, 39) and in every case the prothonotary shall take a receipt for such record or paper from the person to whom he delivers it, 2, 4, 22, 39, 45, to be attached to said order, and retained until the record or paper is returned (except in cases of returns to appeals to the Supreme Court, 6, 11, 28, 30, 35, 36, 40) and in cases before arbitrators, referees, auditors, commissioners or masters, the prothonotary may on their application deliver to them the pleadings, commissions, depositions, exhibits, or other papers filed in the cause, 11, 13, 28, 30, 35, 37, 40, 41, taking their written receipt therefor (in a book to be kept for that purpose, 21) stipulating for the return of the same into the office when the award is made, or their duties are otherwise terminated. 14, 16, 20, 23, 24, 25, 26, 27, 34, 36, 44, 46, 47, 49.

1591. If the above rule be violated by any attorney or other officer of this court he shall be deemed guilty of official misconduct and contempt of court. 33.

1592. No records shall be taken from any of the offices except by resident attorneys, who shall be required to give their receipt for the same; and in no cases shall they be taken from the county seat, 43, except by special leave of court. 10.

1593. No person other than the prothonotary, or one of his authorized clerks, shall be permitted to handle the files or papers in any case; 18, 37, but any attorney who desires to examine any paper shall be permitted to do so in the presence of the prothonotary or one of his said clerks; and it shall be the duty of the prothonotary to produce such files on the demand of any attorney. 11, 41.

1594. Any attorney who procures a paper belonging to the files of the court shall give his receipt therefor in a book to be kept for that purpose, and shall be responsible for the same, and if lost shall be personally responsible for all damages arising from the loss, and for all costs and expenses incurred by any party in supplying such loss, and such other penalties as the court may impose. 6, 18, 37, 48.

1595. The dockets shall be kept clean, and the entries therein made in a fair and legible hand; and no entries shall be made therein except by the prothonotary himself, or his deputy, or by his express consent. No improper entries shall be permitted by him to be made therein, and none by counsel, even when pertinent, except with his express knowledge and permission, in order that other entries dependent thereon may be forthwith made by him. He shall keep up the indices to all the dockets, and when he finds any of the dockets in need of being rebound or transcribed, shall bring them before the court for the proper order. 27, 36.

1596. On the first day of each regular term of the court, there shall be a committee of three members of the bar appointed, whose duty it shall be to examine the books, records and papers, in the several offices of the court, or at the next term, and report in writing before the adjournment of the court, whether the same are properly kept, whether the said records and indices are regularly and fully brought up to the commencement of the then current term, and whether the papers in the said offices are duly filed, recorded and deposited in the vaults provided for their safe-keeping; and it shall further be the duty of the said committee to suggest to the court such improvements, as in their opinion would be proper to be made in the character of the books and records in the said offices, and in the manner of keeping the same. 42.

1597. On the first day of the first argument court in every year the prothonotary shall submit the books and records to the court, as required by the 4th section of the Act of March 29, 1827; and also make known any deficiency discovered chargeable to the neglect or misconduct of a preceding officer, that the court may make the order required by the resolution of June 17, 1839. 17, 50.

1598. It is hereby recommended that the offices containing

the official papers be so railed off and protected that no one but the persons aforesaid can have access to the papers and records in the said offices. 41.

#### REFERENCES

[See also §§ 845, 1365 and 1366.]

1599. For the purpose of preventing the difficulty of knowing under what law the parties to a submission are proceeding, owing to the loose manner in which the submission is often drawn up, every submission intended to be made a rule of court, shall expressly state under what Act the submission is made, and that it shall be a rule of this court, otherwise the award shall not be received by the prothonotary, or become a judgment, or be approved, and if improvidently entered, the omission to state either or both requisites shall be a sufficient ground of exception to set the proceedings aside. 27, 36.

1600. When an award is filed under the third section of the Act of 1705, the party in whose favor the same is made shall serve a copy thereof on the opposite party. If no exceptions are filed within ten days after the service of such copy, the prothonotary shall enter judgment on the award. 36.

1601. When an award is filed and entered in pursuance of the provisions of the first and second sections of the Act of 16th June, 1836, a rule nisi shall be entered by the prothonotary thereupon that the parties submit to, and be finally concluded by the same. 36.

1602. When an award is filed and entered in pursuance of the provisions of the sixth section of the Act of 16th June, 1836, the prothonotary shall enter thereupon the approval of the court and judgment nisi. But no attachment for non-compliance or execution in the former case shall be moved for, nor execution issued in the latter case, until notice in writing of the filing of the award shall have been given by the party seeking to enforce the same, to the opposite party or his attorney, and twenty days shall have elapsed after the service of such notice without exceptions being filed. 36.

1603. When an award is filed under the third section of the Act of 16th June, 1836, the party seeking to enforce the same shall serve notice in writing of the filing thereof upon the opposite party or his attorney. 36.

1604. The parties may agree, by writing filed, that the report may be made into the proper office, and upon their own terms with regard to judgment and exceptions. 15, 32.

1605. Whenever any report of referees is filed (under the Act of 1836, 36), notice thereof shall be served on the opposite party or his attorney (by the prothonotary, 48), who shall have (four days, 1, 7, 16, 22, 28, 39) (fifteen days, 14) (twenty days, 36), from such notice to file exceptions, 22, which shall be accompanied with an affidavit or affidavits as to facts which do not appear upon the face of the proceedings, 7, 14, 16, 36, 38, 39, 42, and no execution shall issue until after the expiration of the said time. 1.

1606. In all cases of reference by consent of parties, not otherwise provided for by law, awards must be presented for approval nisi at regular motion time at the first term after their rendition, and, unless exceptions be filed thereto within four days, after presentation for approval, excluding Sunday, the same shall be approved absolutely, and judgment be entered thereon as a matter of course by the prothonotary. 20.

1607. Reports of referees under §§ 3 and 6 of the Act of 16th June, 1836, shall be presented in open court on the first (second, 42) day of the term, and exceptions must be filed within four days thereafter, verified by affidavit as to all facts not appearing on the record. 4. If filed in vacation, or not read on the day appointed, exceptions must be filed within four days after notice of the filing of the report, otherwise they shall not be received. 42.

1608. Reports of referees, in all cases, except when otherwise provided by law, shall be read in open court, and judgment nisi shall be entered, within four days after notice of which, exceptions may be filed with an affidavit of the truth of facts not appearing on the face of the report. 23. If the report be read and judgment nisi entered, on either of the last two days of the sitting of the court, exceptions may be filed on or before the first day of the next term. 15, 32.

1609. If exceptions to any of the findings of said referee be filed within the time prescribed, the referee may, upon argument, order judgment to be entered according to the decision previously filed, or make such modifications thereof as in justice and right shall seem proper, subject always to reconsideration

by this court, and to an appeal to the Supreme Court to be taken in the time and manner, and with the effect prescribed by law. 48.

1610. All bills of referees appointed under the Act of 1870, and supplements, shall be presented for approval in open court; and, if approved, a record of the amount of the bill and the approval of court shall be made in the case. At the time of presentation of a bill for approval the report of the referee shall be produced for examination. The bill shall state, in distinct items, the number of days necessarily spent in hearing the case, and the number of days in preparing the report, and shall be accompanied by an affidavit of the referee that the bill is correct, and that the amount charged is justly due, and the bill shall not be approved unless the report has been filed. 11.

#### REPORTS OF SALES

[See Sales.]

#### RESERVED POINTS

[See Trials.]

#### RETURN DAYS

1611. All writs issued for the commencement of actions, all writs of scire facias, and all writs and process of every kind (except executions) shall be made returnable on the first Monday of the next term, or at the election of the party suing out the same on the second (first, 5) (third, 51) (fourth, 4) Monday of any intermediate month, 3, 4, 5, 13, 22, 50 (third, except August, 51) (except the month of July, 4): Provided, that all such writs issued within ten days of the first day of the next term shall be made returnable on Friday of the second week of said term (being the day preceding the last day of the said term) or on the first day of the second term. 17.

1612. Every writ for the commencement of an action (except summons in partition, 47) (including all writs of scire facias, 20) issued out of the common pleas (in and for the county of Union, 20) shall bear date on the day of the issuing thereof, and may be

made returnable on the first Monday of each and every month, as well as on the first day of each and every term of said court, except summons in partition which shall be returnable on the first day of the then next term ; and such process may be directed to be returned to either of the said monthly return days which may happen before the next term, or to the first return day of the next term, at the option of the party taking out the same ; or, in case there should not be ten days between the issuing thereof and the first day of the next term, the same shall be made returnable on any Friday of the term, or on the next monthly return day thereafter, or to the first day of the next succeeding term, 47 ; and in all suits instituted in said court, where returns of such process are directed to be made to a monthly or other return day, the party may obtain such rules, file declarations and other pleadings, take judgments for want of appearance or affidavits of defence, put causes at issue and have them tried, and do all other matters and things in the prosecution of suits that might be done if the said writs had been returned on the first day of any term of the said court. 20.

1613. All writs issued for the commencement of actions, all writs of scire facias to revive judgments and to continue the lien thereof, and all other writs of scire facias, writs and process of every kind, may, at the election of the party suing out the same, be made returnable on the first or second Monday of the then next term, or on the second, third or fourth Monday of any intermediate month : Provided, that in case there shall not be ten, and in mechanic's liens fifteen, days between the issuing thereof and the first day of the next term, the same may be made returnable on any Friday of the term, or on the next monthly return day thereafter, or to the first day of the next succeeding term. 18.

1614. All writs issued for the commencement of actions, all writs of scire facias to revive judgments and continue the lien thereof, and all other writs of scire facias, writs and process of every kind (in the counties of Snyder and Mifflin and except writs of summons in partition, 20) may at the election of the party suing out the same be made returnable on the first Monday of the next term, or on the (first, second, third or, 10, 14, 16, 40,) fourth Monday of any intermediate month, 10, 14, 16, 20, 29, 40, 48, except the months of July and August ; and the



rules of court relating to the taking of judgments by default for want of an appearance or for want of an affidavit of defence, shall apply to all such writs or process made returnable to the intermediate months as well as to the first Monday of the regular term. 43.

1615. All writs of summons, capias and scire facias shall be issued to the next succeeding return day which is not less than ten days distant; and such return days shall be the fourth Monday of each and every month, except July which shall have no return day, and except January and November, the return days of which shall be the first day of the terms of said court in said months. 12.

1616. Every summons in partition shall be returnable to the first day of the next term. 47.

1617. Second return days will be dispensed with, and no writs will be returned thereto. 7.

1618. All writs of scire facias may be made returnable to the first Monday of the next term, or on the second Monday of any intermediate month. 47.

#### **RIGHT OF WAY**

[See Condemnation Proceedings.]

#### **RULES TO SHOW CAUSE**

[See Motions and Rules to Show Cause.]

#### **SALES**

[See Sheriff's Sales and Deeds and §§ 223, 1228-1230 and 1378.]

1619. All applications for sale, mortgage or partition of real estate, must be joined in by all the parties interested as owners, whether present or expectant. Otherwise no order will be made until a citation has been served, or publication made warning them to appear and show cause why the order applied for should not be made. Where minors have no guardian, they shall be served if over fourteen years of age, otherwise service shall be made on their next of kin or a guardian ad litem appointed by the court. 17, 50.

1620. Every order for the sale of real estate shall contain a condition that bonds shall be given with proper and sufficient sureties in double the value of the real estate. 43.

1621 Sales ordered "on the usual terms" shall be upon the payment of one-third the purchase money at the confirmation of sale by the court, and the remainder in two equal annual instalments from that date, with lawful interest, to be secured by bond and mortgage on the premises, the bond and mortgage embracing attorney's commission in case the same shall have to be collected by legal process. In sales under proceedings in partition, where there is a widow entitled to a share of the estate, the second deferred instalment shall remain charged upon the premises during her lifetime, the interest to be paid to her annually from confirmation, and principal to parties entitled at her death. 17, 50.

1622. The time of sale shall be fixed by the clerk in the order as the party making sale may request, and the place of sale shall be on the premises, unless otherwise ordered, with leave to adjourn the sale from time to time if no sufficient bid is obtained, and to any other public place, on giving due open and public notice of such adjournment. 17, 50.

1623. No order of sale shall issue by the officer, in conformity to the authority allowed by the court, until security shall have been entered, 7, 38, and filed, after approval by the court. 47.

1624. Ten days (five days, 3) (fifteen days, 40) notice shall be given to the lien creditors of an intended application by an assignee for the benefit of creditors for an order to sell real estate. 3, 40, 43.

1625. All petitions of assignees to make public sale of the real estate of assignors, presented to court under the provisions of an Act approved February 16, 1876, shall state specifically the liens on said real estate, 3, and no order of sale will be granted unless all the lien creditors whose liens will be divested by the sale will join in said petition, or unless notice of the time of presenting said petition, specifying the terms of sale to be asked for, shall have been given to all such lien creditors who do not join in the petition, at least ten days before such petition is presented, and an affidavit of the service of said notice, with a copy of the same, shall be filed with said petition. 19, 36

1626. Petitions for sale of real estate by assignees under

the Act of 17th of February, 1876, shall in all cases be under oath ; and shall include in addition to the other requirements of the first section of said act :

*First* —A statement in the aggregate of the value of the personal property of the assignor.

*Second*.—A like statement of liabilities other than liens.

*Third* —A description of the real estate, with an estimated valuation thereof, and in connection a statement in the aggregate, of debt, interest and costs of the liens.

*Fourth*.—A brief statement of the grounds for claiming it to be for the manifest interest of all parties, to authorize a sale as prayed for ; and shall be accompanied with certified lists of liens, and with proof that at least ten days previous notice, according to the form hereafter prescribed, has been given to all lien creditors ; otherwise rules to show cause will be granted requiring like notice. 10, 18.

1627. The notice to lien creditors shall be substantially as follows :

“ Take notice that at            o'clock of            the            day of            18    , I will present to the Court of Common Pleas of            county, at            , my petition as assignee of            , of            , for an order to sell the real estate of said assignor, discharged of liens, and also for an order to stay execution on all liens that will be divested by said sale, at which time and place you may be heard touching said order of sale.” 10, 18.

1628. The order shall in all cases conform to the statutory provisions as to notice, and when not otherwise specially ordered, embrace the direction that the sale take place on the premises, and the terms thereof to be one-half on confirmation of sale, and the remainder in six months thereafter, with interest. Deferred payments to be secured by judgment bond and mortgage. 10.

1629. No order shall issue until bond, in due form executed and approved, be filed. 10, 18.

1630. All applications made in pursuance of the provisions of the Act of Assembly, approved April 18, 1853, and its supplements, where the value of the real estate shall exceed the sum of \$1000, may be referred by the court to a competent person to examine and report upon the propriety of granting the same. 32.

1631. In all such cases, the petitioner shall produce to the

court or master, or examiner, affirmative proof of the facts alleged in the petition, except deeds, wills and matters of record, together with the testimony of competent persons acquainted with the value of real estate in the particular locality. 32. The sale shall take place on the premises unless otherwise ordered by the court. 18.

1632. Returns to such orders reporting a sale shall in all cases state the conditions of sale, and be filed in open court, and if approved by the court, confirmed nisi, and absolutely, unless exceptions be filed thereto within (four days, 47) (ten days, 38) (twenty days, 7) thereafter, 38, 47: Provided, that where there are liens of record against the property reported as sold, no such sale shall be confirmed absolutely before the purchase money shall have been paid or secured, in accordance with the conditions of sale approved by the court, unless otherwise directed by the court; but in every case a sale reported twenty days prior to the first day of April in any year, shall become absolutely confirmed on said first day of April, unless exceptions be filed thereto as herein directed. 7.

1633. The counsel making a return of sale shall endorse on it the decree of nisi confirmation, in form as follows:

"And now (giving date) the within return of sale being duly read and presented to the court, the same is confirmed nisi, and unless exceptions be filed thereto within (the time limited by rule of court) the same will be marked confirmed absolutely *sec regulum*. 47.

1634. The full decree of confirmation shall be drawn by counsel and accompany the return of sale, which decree shall contain directions to execute the proper conveyance. It shall recite the fact of the nisi confirmation and the absence of exceptions. 47.

1635. Every report of sale shall set forth that the notices were given as required by law and the order of court, that the sale was made as directed therein, and to the highest and best bidder, and for the highest and best price that could be obtained therefor. 17, 50.

1636. The report of sale, on being presented in open court, shall be confirmed nisi. If no exception shall be filed within ten days (eight days, 8) confirmation shall become absolute, and a decree shall be entered, of course, 8, that the premises be

conveyed to the purchaser, his heirs and assigns, for such estate, right, title and interest as the person whose estate was sold had therein, on compliance of purchaser with the terms of sale. But no sale shall be marked confirmed until the security required by law has been given and approved. Where objections have been made, or exceptions filed, no deed shall be made until the time for appeal to the Supreme Court has expired. 17, 50.

1637. In all cases where application is made for the confirmation or approval of a private sale or lease of land, the party applying for the same shall, at the time of presentation of the petition, furnish therewith and file the affidavits of at least three credible witnesses, which shall set forth that they are acquainted with the land sold or leased, and know the value of the same, and that in their opinion the price obtained is a fair and reasonable one, or that the terms of the lease are as reasonable and fair as can or may be. 17.

1638. A report of the sale of real estate shall be accompanied by an affidavit that the facts therein set forth are true, and that the person making the sale is neither directly nor indirectly interested as purchaser of the property sold, 47, or any part thereof, 3, 43, and the sale so reported shall be confirmed at once, unless exceptions have been filed, or the court deems best to hold the matter under advisement. 9.

1639. Every order of sale of real estate granted to an assignee for benefit of creditors shall direct (unless otherwise specially ordered) that the purchase money shall be payable 10 per cent. down at the time of sale, and the balance in sixty days thereafter, upon confirmation of the sale. 23.

1640. Unless otherwise prescribed at the time of granting, all orders of sale shall be made returnable at the next term of court after the execution of the order. 19.

1641. Reports of sales of real estate made by assignees (for the benefit of creditors, 10, 13, 18, 36, 45) (trustees or others, 19, 20, 26, 43) under order of this court, may be read on any motion day during a regular term, when they will be confirmed nisi; and unless exceptions are filed within (four days, 20, 26, 43) (ten days, 10, 13, 18, 36, 45) (before March 26th, next, 19) thereafter, such reports will be confirmed absolutely of course, and shall be so marked by the prothonotary,

13, 19, 20, 26, 36, 43, 45, who shall enter the proper decree without further order. 10, 18.

1642. The return of sale where the purchaser appears by the proper record to be entitled as a lien creditor to receive the whole or any portion of the proceeds of sale shall be read in open court on the return day of the order of sale, and be confirmed nisi as of course, which confirmation shall become absolute without further order, unless exceptions verified by affidavit as to matters not of record be filed within five days. 43.

1643. The whole purchase money, or so much thereof as shall be sufficient to discharge all liens divested thereby, shall be required to be paid at the confirmation of the sale, or within five days thereafter. 19.

1644. The days fixed for the acknowledgment of sheriff's deeds are also appointed for reading in open court the return of sale by an assignee for the benefit of creditors, who has accepted the receipt of a lien creditor pursuant to Act 10th June, 1881, and the proceedings thereon shall be similar to those prescribed in case a lien creditor purchases at sheriff's sale. 23.

1645. Notice of application to the court for permission to make deed of conveyance in an assigned estate shall be published once a week for three weeks in two weekly newspapers, and in the legal paper. 19.

#### **SALES TO LIEN CREDITORS**

[See Sheriff's Sales and Deeds.]

#### **SECURITY**

[See Bail.]

#### **SECURITY FOR COSTS**

[See Costs.]

#### **SERVICE**

[See Notices and Pleading.]

### SHERIFFS

[See also Sheriff's Interpleaders, Sheriff's Sales and Deeds and §§ 25, 307-309, 396, 451, 661, 741, 747, 748, 859, 1093, 1094, 1180, 1183, 1188, and 1377.]

1646. It shall be the duty of the sheriff by himself, or duly authorized deputy, to be always present in the court house during the (first week of, 29) sitting of the court, 7, 16, 29, and promptly to execute all orders of the court and process issued by it. 4, 6, 30, 37, 48.

1647. If any sheriff, or deputy sheriff, general or special, (or bailiff, 32) shall wilfully delay the execution of any process, or shall take or require any extra or illegal fees for the same, or shall give notice to the defendant and thereby frustrate the execution of any writ or process, or having collected money on execution or attachment, shall retain the same in his hands after the return of the writ, the officer so offending shall be liable to an attachment, commitment or fine, as the case may require. 6, 15, 32, 48.

1648. The dockets, minutes, writs, accounts, bills, bills of cost, bills for advertising, and all other papers of the sheriff's office, or in the sheriff's custody or possession, concerning process, etc., issuing out of or returnable to the several courts, shall at all times and whenever demanded, be subject to the free and unobstructed examination and inquiry of any committee of the court appointed for the purpose of ascertaining whether the requirements of the laws and rules of court have been complied with in the execution of the duties of the office of sheriff. 7.

### SHERIFF'S DEEDS

[See Sheriff's Sales and Deeds.]

### SHERIFFS INTERPLEADERS

1649. When any claim (under oath or affirmation, 2) shall be made to any goods or chattels, or to the proceeds of the value thereof, under the ninth section of the Act of Assembly, passed April 10, 1848, (P. L. 450), entitled: "An Act extending the chancery powers of and the jurisdiction and proceedings in certain courts", and the supplement thereto, passed March 10,

1858, (P. L. 91), the sheriff shall make immediate application to the court, or to a judge thereof in vacation, for the rule provided by the said Act, and the said court or judge shall appoint a time and place for the hearing of said rule, of which notice shall be given to the parties, or their attorneys, and when such rule shall be made absolute, which may be done on affidavit of one or more competent witnesses, of claimant's right of property, setting forth his title to the property claimed and the manner of acquiring the same, an issue shall be formed (a feigned issue upon a wager in the usual form, 2, 32) to determine whether the right of property in the goods levied on and claimed, or any part thereof is in the defendant or in the claimant, in which issue the claimant shall be the plaintiff, and the plaintiff in the execution the defendant. Whereupon it shall be the duty of the sheriff (he having first given five days notice to the attorneys of the respective parties, 15) to cause an inventory and appraisement to be made by two disinterested and competent persons, under oath or affirmation, of the goods and chattels, concerning which said issue shall have been awarded, and file the same in the office of the prothonotary within ten days after the awarding of the issue, 2, 32, and such inventory and appraisement shall be considered as confirmed, unless within five days after the filing thereof exceptions shall be taken thereto and filed in said office. On the filing of such exceptions, it shall be the duty of the prothonotary to forthwith notify the judge, who shall appoint a day for the hearing thereof at chambers or in court, at his discretion, to determine whether the inventory and appraisement shall be confirmed. A new inventory and appraisement shall be taken if ordered within such time and on such notice as the judge shall prescribe. The same proceedings may be repeated as often as exceptions to the inventory and appraisement shall be filed. 15.

1650. The application for a rule under the Sheriffs Interpleader Act shall be in writing, verified by affidavit (and accompanied by a full and particular inventory of the goods levied on and claimed, 3, 4, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 22, 23, 24, 28, 29, 33, 35, 37, 39, 40, 41, 43, 45, 46, 49, 50, 51) (and shall be accompanied by an inventory and appraisement of the property taken in execution, 27, which appraisement shall be taken and made by two competent and impartial



persons, one to be chosen by the claimant and one by the execution creditor, or his attorney, and sworn by the sheriff, and shall be signed by them at the end thereof, and by him attested. 26). Whereupon a rule returnable at a time when the court shall be in session, may be entered by the officer of course in the prothonotary's office upon the claimant of the property and the plaintiff in the execution, to show cause why they shall not maintain or relinquish their respective claims to the property, 3, 22, 23, 39, a copy of which rule shall be served on the parties or their attorneys of record, 5, at least five days (four days, 18, 29, 37) (ten days, 11, 13, 36, 45) before the return day thereof. 4, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 26, 27, 28, 29, 33, 35, 36, 37, 40, 41, 43, 45, 46, 49, 50, 51.

1651. Feigned issues under the Sheriffs Interpleader Act shall be formed upon a petition of the Sheriff (or plaintiff in the execution, 48) in which the facts of the case, a schedule of the property levied on, and the name of the adverse claimant thereto, shall be stated; whereupon a rule shall be granted upon the plaintiff and adverse claimant to appear at a time fixed and show cause why an issue should not be formed to try their respective rights to the property levied on, which rule shall be served by the sheriff, or some one for him, five days before its return day. Upon the return of said rule the court may make such order as the exigencies of the case require. If necessary an issue shall be directed, in which the claimant shall be plaintiff, and the plaintiff in the execution defendant, 6, and in the meantime the property shall remain in the custody of the sheriff, and subject to the lien of his writ, unless the said claimant shall give sufficient bond and security to the sheriff, that the same shall be forthcoming on demand in case the verdict is against him. 48.

1652. When a claim shall be made to goods and chattels levied upon during vacation, the petition must be accompanied with an affidavit, setting forth sufficient facts to make out a prima facie title in the claimant. Upon filing said petition the rule provided by Act of Assembly may be entered as of course. Should no exceptions be filed within five days after notice, said rule shall be marked absolute by the prothonotary. When exceptions to the sufficiency of said affidavit are filed, the exceptant must forthwith apply to the judge to fix a time and place

for hearing, of which due notice shall be given by the exceptant to the sheriff, and all parties interested, or to their attorneys. 32.

1653. In all cases where the sheriff by virtue of a writ of fieri facias shall levy upon personal property, claimed by a person or persons not a party to the writ, the sheriff may present his petition, under the Interpleader Act, to the judge at chambers, who shall award a rule on the plaintiff and the claimant or claimants, to appear within twenty days after the service of said rule, to maintain or relinquish their respective claims to the property levied on. If the claimant shall not, within the said time, file with the prothonotary notice of his intention to maintain, the sheriff shall proceed to sell the property; and if such notice is filed, and the plaintiff in the suit shall not within said time file his notice to maintain, the sheriff shall relinquish the levy on the goods claimed. If both parties file notice to maintain, the sheriff shall give notice to the court. After such notice the court may award an issue to determine the title to the property, which shall be put at the head of the list for the second week of the next succeeding term: Provided, such issue shall be awarded four weeks before the first day of the term. 47.

1654. No such rule shall be granted on the application of the sheriff, until he shall have filed a full, detailed and perfect inventory of the goods and chattels levied upon and claimed. 7, 38.

1655. If the court shall not then be in session, the application for the rule may be directed to be issued by one of the law judges of the court, and be made returnable on the first day (third day, 36) of the meeting of the court, 21, 30, not less than ten days thereafter, and be served as in other cases. 11, 13, 36, 45.

1656. When counsel reside out of the county, notice by mail shall be deemed sufficient. 2.

1657. If personal service cannot be made on the claimant, it shall be made by publication, or otherwise, as shall be specially ordered by the court, or the judge allowing the rule. 36.

1658. The rule shall be served at least ten days upon a claimant personally, or at his place of abode, in the same manner as a summons; or if he has no residence in the county, by publication according to rule, or in such manner as the court may specially order. 21.

1659. On the return of the rule, the claimant, or some one for him, having knowledge of the facts, shall answer under oath, stating specifically the articles claimed, and the nature and character of the ownership or claim. 13, 45.

1660. After due service of the rule as aforesaid, if the parties or either of them fail to appear and answer the rule on the return day thereof, the rule shall be discharged; and if the default is made by the plaintiff alone, the officer shall release the property claimed; otherwise (the court will make an order that, 9) he shall proceed with the execution. 3, 4, 5, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 26, 27, 28, 29, 33, 35, 37, 40, 41, 43, 46, 49, 50, 51.

1661. If both parties appear and answer, the court may discharge the rule and direct the officer to release the property, or order him to proceed with the execution; or make the rule absolute and award an issue to determine whether the right of property in the goods and chattels claimed is in the claimant or not; or make such other order as the justice of the case may require. 3, 4, 5, 9, 10, 11, 14, 16, 17, 18, 19, 24, 26, 27, 28, 29, 33, 35, 37, 40, 41, 43, 50.

1662. If on the return of the rule default shall be made by the plaintiff in the execution, the sheriff shall release the property claimed; if default is made by the claimant, the sheriff shall proceed with the execution, 24; and in either case the rule shall be discharged. 36. If both parties appear and answer, the court will make such order as the justice of the case requires. 13, 45.

1663. If the party ruled to appear and defend, after having been served with a notice of that rule, fails to appear, he shall be deemed to have abandoned all claim, right or interest in the property in controversy. And in the event of the plaintiff's recovery in the action, shall be thereafter barred from recovering against the defendant for the same matter. 4.

1664. If the claimant appears, but fails to show cause against the rule, it shall be made absolute, and he shall be ruled to plead as in other cases. 21.

1665. If the plaintiff in the execution shall fail to appear, or plead, or shall relinquish his claim in whole or in part, an order may be made that the sheriff withdraw from the possession of the property, or of so much thereof as shall be relinquished;

and if the claimant shall fail to appear, or to declare, or shall relinquish his claim in whole or in part, an order may be made that the sheriff proceed according to the exigency of his writ as to the property, or so much thereof as shall be relinquished; and if the claimant, after declaring, shall fail to give bond, an order may be made that the sheriff sell, and pay the proceeds into court to await final judgment; and further, that in any of said cases no action be brought against the sheriff with respect to the property levied on. 22.

1666. If the plaintiff in the execution fail to appear at the hearing of the rule, he shall pay the costs of the levy and subsequent proceedings; but if made by the officer at his own instance, the costs shall be paid by him, or the defendant in the writ, or the claimant, as the court shall order. 36.

1667. If at the return of the rule the party issuing the process shall persist in his right to proceed against the property, or to receive the proceeds of sale, and the claimant shall persist in his right to the same, either party may move for the appointment of an auditor to take the evidence and report the facts to the court, with his decision upon the same. On the return of the report into court, if no exceptions be filed, or issue demanded, it shall be marked by the prothonotary confirmed nisi, and if no exceptions be filed within ten days thereafter, the report shall be considered absolute, and the facts deemed to be as so decided. 36.

1668. If either party, before the appointment of an auditor, or before the return and filing of his report, shall ask for an issue to try the facts, he shall be entitled to the same; but not otherwise, if he had due notice of the audit. The request of the party for an issue shall be in writing and duly filed, and if allowed by the court, a feigned issue shall be framed in such case without any special order or direction. 36.

1669. On the return of the rule, if both parties appear and maintain their respective claims, the rule will be made absolute. If the claimant appears and maintains his claim and the plaintiff does not, the sheriff will be ordered to withdraw from the possession of the goods claimed, and that the plaintiff take no proceedings against him in respect of such goods. If the claimant relinquish part of his claim, the court will, on motion, order the sheriff to proceed and sell the goods so abandoned, and the rule

will be made absolute as to the rest. If the claimant relinquishes his whole claim, or if he does not appear and maintain his claim, the order will be that the sheriff proceed with the execution, and that the claimant be debarred of any action against him in respect of the goods claimed. 23, 39.

1670. If an issue is awarded, the claimant shall be plaintiff and the execution creditor defendant; and unless otherwise ordered, the claimant shall within (five days, 3, 9, 10, 17, 19, 26, 27, 28, 33, 35, 40, 41, 43, 50) (ten days, 4, 5, 6, 11, 13, 14, 16, 18, 24, 29, 32, 37, 45) (fourteen days, 1, 47) (twenty days, 2) thereafter file a declaration and give bond to the defendant in the issue, 47, in double the (appraised, 2, 32) value of the property claimed (or of the judgment, if it be less than that, 32), in such penal sum as the court shall direct, with security to be approved by the court (or one of the judges thereof, 6, 9, 18, 21, 29) (or the prothonotary, if the court be not in session, 4, 10, 19, 26, 27, 28, 35, 40, 41, 43), conditioned that upon the determination of the issue (such of the goods and chattels claimed, as shall be determined not to belong to the claimant, shall be forthcoming to answer the execution of the defendant in the issue, 1, 3, 4, 5, 6, 7, 9, 10, 11, 13, 14, 16, 17, 18, 19, 24, 27, 28, 29, 33, 35, 37, 40, 41, 43, 45, 50), the appraised value of such of the property as shall be found not to belong to the claimant shall be paid to the execution creditor, to the extent of his judgment, interest and costs, and such other costs on the interpleader as the court may award. 2, 26, 32.

1671. (Whenever a rule taken by the sheriff under the Interpleader Acts is made absolute by the court, without any special order or direction, a (feigned) issue shall be framed in such case to determine whether the right of property in the goods levied on and claimed, or any part thereof, is in the defendant in the execution, or in the claimant. 1, 20, 23, 30, 39.) In such issue the claimant shall be plaintiff (if not in actual possession of the goods claimed at the time of the levy; but if the plaintiff shall be in actual possession of the goods claimed at the time of the levy, he shall be made defendant, and the plaintiff in the execution shall be made plaintiff, 12, 25, 44, 46, 49, but the wife of the debtor, claiming property seized in execution as the property of her husband, will always be made plaintiff in the issue. 12, 20, 51). Unless otherwise ordered, the

plaintiff in the issue shall file a declaration within (five days, 12, 46, 49, 51) (ten days, 15, 23, 30, 34, 44) (fourteen days, 1, 7, 8, 21, 22, 36, 38, 39) (twenty days, 20, 25) after the rule is made absolute (after notice of the appointment of an auditor, 36), and within the same time give bond to the plaintiff in the execution (in double the (appraised, 15) value of the property claimed, 12, 23, 46, 49, 51, or the amount of the judgment, whichever shall be least, 15) (in such penal sum as the court shall direct, 1, 7, 8, 20, 21, 25, 30, 34, 38, 39, 44), with security to be approved by the court or one of the judges thereof (or the prothonotary if the court be not in session, 12, 36, 46, 49, 51) conditioned that upon the determination of the issue such of the property claimed as shall be found not to belong to the claimant shall be forthcoming to answer the process of the plaintiff in the execution. 1, 7, 8, 12, 20, 21, 22, 23, 25, 30, 34, 36, 38, 39, 44, 46, 49, 51.

1672. In all cases where the rule to interplead has been discharged, and the sheriff has been ordered to withdraw from the possession of the goods and chattels levied on, or to proceed with his levy, no action shall be brought against the sheriff in respect to such goods and chattels unless otherwise ordered by the court. 5.

1673. As soon as the declaration is filed and bond approved the sheriff shall withdraw from the possession of the property claimed, without further order, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 27, 28, 29, 30, 32, 33, 35, 37, 38, 40, 41, 43, 44, 45, 46, 49, 50, 51; no action shall be brought against the sheriff in respect to the said property; and the question of costs, and all further questions shall be reserved until after the trial of the said issues, 1, 6, 7, 8, 21, 22, 23, 34, 39, and the same are to be tried according to the order of time in which they are directed. 20, 25.

1674. A failure to give bond or to file a declaration shall be deemed an abandonment of the claim; and a failure on the part of the defendant to join issue for (ten days, 2, 32) (twenty days, 15), after notice in writing of declaration filed, shall be deemed an abandonment of his levy. 2, 15, 32.

1675. If the claimant neither files his declaration nor gives his bond, the court will, on motion, order the sheriff to proceed with the execution, and that the claimant be barred of his action,

etc. 30 (against the sheriff, saving his right of action against the plaintiff and all others. 6, 26). If he files his declaration, but neglects to give his bond, the court will, on motion, order the sheriff to proceed and sell, and pay the money into court to abide the result of the issue. 6, 23, 26, 39

1676. If the claimant neglects to file his declaration (when plaintiff in the issue, 20, 46, 49), or to give bond, the officer shall proceed with the execution, 47, and bring the proceeds into court to abide the further order of the court, 3, 8, 9, 10, 14, 17, 18, 19, 20, 21, 26, 27, 28, 29, 33, 35, 37, 40, 41, 43, 46, 49, 50, 51, and the claimant will be barred of his action of trespass, and must look to the fund alone. 4.

1677. Upon failure to comply with the rules in regard to bond and narr, no execution shall be issued until leave has been obtained from the court, by the plaintiff or the sheriff, on a rule before the judge. 38.

1678 If the claimant, when required, is unable to give security (or neglects when plaintiff to file his declaration, 12) (upon satisfactory proof of that fact, by affidavit or otherwise, within the time limited for giving bond, 15, and it is made to appear that the property is so perishable or chargeable as to depreciate materially in value pending trial, 48), the court may order the officer to proceed with the execution, and bring into court the proceeds of the property claimed, there to abide the event of the issue and the further order of the court. 5, 11, 12, 13, 15, 32, 45, 48.

1679. The declaration shall be in the following form, viz. :  
 " A. B., plaintiff, complains of C. D., defendant, and says that heretofore, to wit, on the                      day of                      (the day on which the execution came into the hands of the sheriff) the right of property in certain goods and chattels, viz.: (here specify the property claimed) was and still is in him; and that the defendant, disregarding said right, has caused said goods and chattels to be levied on as the property of one E. F.; he, therefore, brings suit to determine his right of property aforesaid." To which the defendant shall forthwith plead, in substance, that the right of property in said goods and chattels is not in the plaintiff as alleged in his declaration, and of this he puts himself on the country, 5, 7, 11, 12, 13, 15, 19, 20, 21, 24, 26, 28, 35, 37, 38, 39, 43, 45, 46, 47, 48, 49, 50, 51, and the cause shall

be put down for trial (at the head of the list, 9, 10, 40) as an issue ordered by the court. 8, 9, 10, 14, 16, 17, 18, 27, 29, 33, 40, 41.

1680. The declaration in such issue shall be a statement of the plaintiff's claim of property in the goods and chattels, 6, setting them forth with their value. The plea of the defendant shall be "the defendant denies the allegations in the plaintiff's statement". 2.

1681. If the property claimed be sold by order of the court as perishable, and the proceeds be paid into court, the claimant's bond shall be thereby discharged. 3, 23, 39.

1682. The defendant shall file his answer within five days after notice of the filing of the statement, or of the payment of the proceeds of the goods into court. 6.

1683. After an issue has been framed and bond approved (the claimant, 10, 16, 18, 21, 28, 29, 33, 35, 40, 50, in possession of the property, 11, 13, 14, 17, 28, 37, 43, 45) (either party, 8, 9, 12, 20, 46, 49, 51) may by petition and with notice to the adverse party, apply to the court for an order to sell the goods and chattels in controversy (or any part thereof, 19) on the ground that they are perishable; whereupon the court, if the interest of the parties appears to require it, may order such property to be sold by the sheriff or other officer, and the proceeds paid into court to abide the event of the issue, 6, 24, and when this is done it shall operate as a satisfaction of the bond given by the claimant, 5, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 27, 28, 29, 33, 35, 37, 40, 41, 43, 45, 46, 49, 50, 51, if the whole of the property be sold; and if only a portion thereof be sold it shall operate to satisfy the claimant's bond pro tanto. 19.

1684. All proceedings under this rule until the issue is framed shall be entered upon the record of the execution by the prothonotary. 15.

1685. The question of costs, and all further questions, shall be reserved until after the final confirmation of the auditor's report upon the facts, or the trial of the issue when demanded. After the claimant shall have notice of the application of the sheriff or other officer, no action shall be brought against the sheriff or other officer in respect to such goods or chattels. 36, 44.



1686. A party claiming a right to or interest in the subject-matter of the controversy as aforesaid, in any action, may be permitted to come in and defend and interplead to the action, in the same manner and to the same effect as hereinbefore provided. 4, 17, 20, 21, 28, 35, 36, 41.

#### SHERIFF'S SALES AND DEEDS

[See also Execution and §§ 662, 733-739, 741, 747, 748 and 761.]

1687. Notices of all sheriff's sales of real estate, containing a brief abstract from the large advertisements, stating the character of the property, as whether a farm, manufactory or town lot, improved or unimproved, the township or borough where located, and as whose property to be sold, shall be published by the sheriff in the legal periodical of the court, once a week for three successive weeks before the sale, in addition to the advertisements now required by law. 2.

1688. The advertisement by the sheriff of writs of venditioni exponas (or fieri facias against real estate, where inquisition and condemnation have been waived) and levari facias, under the Acts of Assembly relating to executions, shall be three times in the legal periodical of the court, and once a week for three successive weeks in two daily newspapers, and the first advertisement in said daily newspaper shall not be less than twenty-one days before the day of sale. 1, 32.

1689. The newspapers in which notice is to be given by advertisement of sales of land by the sheriff or coroner, shall be the two newspapers at the county seat having the largest bona fide circulation in the county, and representing the two leading political organizations in the State. 22.

1690. It shall be the duty of the sheriff to include in his advertisement of any and every sale of real estate, a notice to all parties interested in the distribution of the proceeds, of the time when the same will be made. 23.

1691. The abstract required to be published in the legal newspaper shall contain the names of the parties, the kind of writ, the term and number of the case, the name of the attorney, the quantity of land, and the township, borough or city in which the premises are situated, with the ward, street, road, etc., on which it is located, and no more. 32.

1692. In no case shall the list of sheriff's sales be divided, but each newspaper selected for their publication shall contain the entire list. 24.

1693. Whenever the sheriff shall make sale of any real estate, he shall exhibit at the sale the written conditions thereof, and the purchaser shall sign a note thereon stating the sum at which he became the purchaser. 18. No deed shall be acknowledged until the conditions of sale (and the process on which the sale was made, 6, 28, 30, 35) shall be exhibited to the court, 6, 28, 30, 35, and the prothonotary shall certify that the process upon which the same was made has been returned and filed. 37.

1694. All sales of real estate by the sheriff shall be held at the sheriff's office, unless the defendant, before the advertisements are printed, shall require the same to be held on the premises, in which event the sale shall be held in the first instance on the premises, with liberty to adjourn the same to the sheriff's office, if deemed necessary. 3.

1695. Whenever an equitable interest of a defendant is sold, subject to purchase money due the vendor of the land, the sheriff shall state the same as near as may be in the conditions of the sale, and if the vendor who claims such lien assisted in procuring said sale, or if he by himself, or his agent, shall be a bidder at such sale, it shall be his duty to inform the sheriff of the amount of his claim, so that it may be inserted in the conditions. 6.

1696. *First.*—Returns by the sheriff upon process for the sale of real estate, made in pursuance of the Act of Assembly entitled "An Act relative to lien creditors becoming purchasers at judicial sales and for other purposes", passed the 28th day of April, 1846, shall be read in open court (on the Saturday (Monday, 8) next following the day on which the return shall be made, 1, 8, 23) (on the fourth Monday of the term unless the court designate another day. 21.)

*Second.*—(The sheriff shall on the day when his return is read in court give notice thereof to all persons who have notified him that they claim an interest in the proceeds of any real estate returned sold as aforesaid, 1, 23) and any of such persons may file exceptions to the right of the purchaser mentioned in the return, to the said proceeds or any part thereof, but such exceptions must be founded upon material facts in dispute, the nature

and character of which must be set forth and verified by affidavit, or upon some matter of law appearing of record.

*Third.*—Exceptions to the right of the purchaser to the proceeds of any sale as aforesaid, must be filed with the prothonotary, on or before the Wednesday (Monday, 21) next following the day on which the return of sale shall have been read as aforesaid, but not later.

*Fourth.*—The party filing exceptions as aforesaid shall thereupon enter of course, in the office of the prothonotary, a rule upon the purchaser to show cause why the sale should not be set aside, which rule shall be made returnable on the Saturday next following the day upon which the exceptions shall be filed as aforesaid, of which rule he shall forthwith give notice to the purchaser or his attorney.

*Fifth.*—(On the return of the rule entered as aforesaid, 1, 23) if the exceptions are deemed sufficient, the court will appoint an auditor to make a report of distribution of the proceeds of the sale, or direct an issue to determine the validity of the lien of the purchaser, if the case shall require it, and thereupon all further proceedings under such rule shall be stayed until the report of the auditor shall be made and approved by the court, or the issue directed as aforesaid shall be determined. If the exceptions are insufficient, the court will dismiss the same and discharge the rule.

*Sixth.*—The report of an auditor appointed as aforesaid, shall be subject to the rules applicable to the reports of auditors distributing the proceeds of sheriff's sales in other cases. And the party in whose favor the verdict, on an issue directed as aforesaid, shall have been rendered, shall be entitled to enter judgment thereon, according to the rules applicable to verdicts in other cases.

*Seventh.*—If it shall be the judgment of the court upon the report of the auditor appointed as aforesaid, or upon the verdict of a jury, that the purchaser is not entitled to receive the proceeds of the sale, or any part thereof, the rule entered as aforesaid shall become absolute of course, at the expiration of ten days after the report has been confirmed or judgment entered, unless the purchaser shall, within that time, pay or cause to be paid to the sheriff who made the sale, the whole of the purchase

money, or so much thereof as it shall be adjudged he is not entitled to retain.

*Eighth.*—If no exceptions shall be filed as aforesaid, or if the exceptions shall be dismissed by the court, or it shall be otherwise determined that the purchaser is entitled to the proceeds of the sale, or if the purchaser shall pay the purchase money or such part thereof as may be adjudged to be payable by him, the sheriff shall be allowed to acknowledge his deed for the estate sold as aforesaid, and deliver the same to the purchaser thereof on the following Saturday, or on any other subsequent day appointed by the court for the acknowledgment of sheriff's deeds, unless a motion shall be pending to set aside the sale for irregularity of the proceedings, or for some other cause. 1, 8, 21, 23.

1697. Returns made by the sheriff of his proceedings in pursuance of the second section of the Act relative to lien creditors becoming purchasers at judicial sales, and for other purposes, passed April 20, 1846, shall be read in open court, (on the days fixed for the acknowledgment of sheriff's and coroner's deeds, 15, 32) at the opening of the session thereof next after the filing of such return. 22.

1698 Notice of special returns shall be given on Mondays of regular terms, at motion time, and shall be read on Thursday, and exceptions thereto may be filed at any time prior to acknowledgment of sheriff's deeds. 20.

1699. Where the purchaser of real estate at a sheriff's sale is a lien creditor, and his receipt has been taken pursuant to the first section of the Act of 20th April, 1846, the return of sale shall be read in open court on Saturday of the first week of the term. And if the right of the purchaser to the money mentioned in said return be not then questioned or disputed, the sale will be confirmed. 39.

1700. In all cases in which any lien creditor shall become the purchaser of any real estate at sheriff's sale, and his right to any money receipted for by him to the sheriff, agreeably to the Act of 20th April, 1846, shall be questioned or disputed by any person interested, the party so questioning or disputing the same, his agent or attorney, shall, before any auditor shall be appointed by the court pursuant to the provisions of the second section of said Act, present to the court and file of record a

statement under oath or affirmation, setting forth the nature of his interest, and that he verily believes from his own knowledge, or reliable information communicated to him, that there are good reasons for so questioning or disputing the right of said purchaser to the money so receipted for by him, and set out in the return of sale. 7, 38

1701. All special returns of purchases by lien creditors, unless objected to by a party interested, shall be read in open court, and marked by the prothonotary confirmed absolutely. But if objections be made, the return shall be marked confirmed nisi, and if no exceptions be filed on or before the following Saturday, the same shall be marked confirmed absolutely. If exceptions be filed they shall be immediately placed on the current argument list, subject to the further action of the court. 18.

1702. In all cases where special returns of the sheriff, or other officer, are authorized by law they shall be read in open court, 3, on Saturday mornings of the first and second weeks of the term, and the reading thereof shall be noted on the writ, process, or other authority to make sale, and on the minutes of the prothonotary. 5, 7, 17, 29.

1703. Upon the reading of a special return the same shall be confirmed nisi, which confirmation shall become absolute unless exceptions shall be filed within (three days, 7) (four days, 6, 29) (five days, 3, 14) (ten days, 5 10, 17). Exceptions not founded on matters of record shall be verified by affidavit, otherwise they shall be treated as not having been filed. 3, 5, 17. The deed, if acknowledged, shall be held by the sheriff and not delivered until final confirmation of the sale. 6, 7.

1704. In all cases where special returns of sale have been made, and acknowledgment of deed in open court is necessary, the acknowledgment shall be taken when the special return is read, and if no exceptions shall have been filed to the special return within ten days, the deed shall be recorded without further order; but if exceptions have been filed the deed shall be held by the officer until the sale is set aside, or the court shall order and direct the deed to be delivered. 17.

1705. When application is made to set aside a sheriff's sale of land, the reasons therefor must be filed on or before the fourth day of the term to which the process is returnable, except when

the sale is made on a day subsequent thereto, in which case they shall be filed on or before the second Monday of the term. 22.

1706. Application to set aside sheriff's sales may be presented on any motion day after sale, but in case of sale of real estate not later than the time fixed for acknowledgment of sheriff's deeds; and in sales of personal property rules to show cause must be applied for and notice thereof given to the sheriff within five days after the sale. 16.

1707. The party making application as aforesaid shall be entitled, upon cause shown, to a rule upon the purchaser to show cause why the sale should not be set aside, which rule shall be returnable on the next argument day, and he shall forthwith give notice of said rule to the purchaser or his attorney. 21.

1708. If there be any defect of description, or misdescription, of property advertised to be sold on any fi. fa., vend. ex., or lev. fa., the party objecting thereto shall serve notice thereof on the sheriff or coroner at or before the day advertised for the sale, and no motion to set aside a sale, or stay proceedings, grounded upon such defect or misdescription in the advertisement, will be heard unless notice be so given, 40, and the motion made on the first day the court sits after such notice. 18, 36.

1709. If satisfied of the defect, or misdescription, the sheriff or coroner may return the property unsold because thereof, and annex the notice to the writ, unless required to proceed by the party issuing the writ, in which event the sale shall be made at his risk and costs, if the same be set aside; but if not so required, and the sale be made by such officer, and afterwards set aside, it shall be at his cost. 18, 36, 40.

1710. When application is made for stay of execution on the ground of misdescription of property, the affidavit upon which such application is based shall contain an amended or corrected description of the property, and such description shall thereafter be conclusive on the defendant in the case. 11, 45.

1711. No motion to open a sheriff's sale of real estate will be entertained unless made by or on behalf of a party interested, at the first opportunity therefor, and which motion shall be accompanied by an offer made in writing, by some responsible person, to raise the biddings at least twenty-five per cent., or to such other sum as to the court shall seem proper under the

circumstances of the case, 8, 30, which offer shall be filed of record, and shall be in the following form; to wit:

"A. B. vs. C. D.

"I hereby agree that the real estate struck down by the sheriff on \_\_\_\_\_, at the sum of \$ \_\_\_\_\_, under the above stated writ, if put up again at public sale shall be started at \$ \_\_\_\_\_, which is my bid for the same.

"E. F."

1712. Before the acknowledgment of any deed executed by the sheriff for lands or tenements sold, the process under which such sale shall have been made shall be duly returned and filed with the prothonotary. 1, 4, 8, 9, 10, 11, 13, 14, 15, 16, 18, 19, 20, 22, 23, 24, 25, 26, 32, 33, 34, 36, 39, 40, 41, 43, 44, 45, 46, 47, 49.

1713. [Each court fixes a special time for the acknowledgment of sheriff's and coroner's deeds, reserving the right to fix other special times by notice given according to the provisions of the 97th Section of the Act of 16th June, 1836.]

1714. Whenever objection shall be made to the acknowledgment of a sheriff's deed, the prothonotary shall note the same on the minutes, stating by whom and on whose behalf such objection is made, and unless exceptions are filed (at the time and entertained by the court, 14, 27, 36) (on or before the first day of the term, 9, 41) (before the next Saturday, 5, 6, 18, 37, 48) (within two days thereafter, 4, 30) (within four days, 7, 29) (within five days thereafter, 3, 19) such objections shall be dismissed, 36, 41 (and when exceptions are founded upon matters not appearing of record, they shall be verified by affidavit, otherwise they shall be of no effect. 3, 5, 9, 30). If exceptions are filed, the case shall be immediately placed upon the argument list, 4, 5, 6, 7, 14, 18, 27, 29, 37, 48, and the court may allow additional exceptions to be filed at any time, if the same are necessary to do justice to the parties. 19.

1715. The acknowledgment of any particular sheriff's deed may be continued, by order endorsed thereon, to a day certain, for cause shown to the court. 30.

1716. Deeds may be acknowledged by the sheriff in vacation, after one week has elapsed from the return day of the writ of execution, upon written notice being posted in the prothonotary's office for five days prior to the time of acknowledgment,

specifying the names of the parties to the execution, the name of the purchaser of such real estate, and the time at which the acknowledgment is to be made, and upon proclamation made in open court. 29.

1717. The sheriff must post in his office the notice required by Act of Assembly that a deed is to be acknowledged, and also like notice that a decree of distribution will accompany the deed. 10.

1718. Whenever it shall be necessary to present a deed by the sheriff for acknowledgment at any other time than on the day fixed by the foregoing section, the same shall be only acknowledged after (four days, 7) (eight days, 23) notice, signed by the sheriff, and posted in his and the prothonotary's office, that such deed will be presented for acknowledgment in open court, on a day and hour to be specifically specified in said notice, which shall also contain a sufficient description of the premises to identify the same, and the names of the purchaser and the defendant in the execution. 7, 23.

1719. When the execution on which the sale is made shall have issued out of another court, or the acknowledgment is intended to be made at a time different from that appointed by rule, the notice to be given to the parties to the execution in the former case, or set up in the prothonotary's office in the latter, as provided for by the 97th Section of the Act of 16th June, 1826, shall be given or set up at least ten days before the day the deed is offered for acknowledgment, and shall be presented to the court with a return of the officer of the service, or setting up thereof, made under his oath of office. 16, 36, 42.

1720. No acknowledgment will be allowed or received (where objection is made, 28, 30, 35) if before the deed is offered for acknowledgment, (it shall appear to the court by affidavit or otherwise, that, 6, 37, 48) the judgment by virtue of which the property was sold has been actually paid (or payment thereof legally tendered, 6, 37, 48), and that said judgment ought to be satisfied. 6, 18, 28, 30, 37, 48.

1721. All sheriff's deeds hereafter acknowledged shall be recorded by the prothonotary in the sheriff's deed book in words at length. 1, 8.

#### SPECIAL RETURNS

[See Sheriff's Sales and Deeds.]



**STENOGRAPHERS**

[See also §§ 1005 and 1006.]

1722. Every order of the court for a transcript of the stenographer's notes shall be reduced to writing and signed by the judge presiding at the taking of the notes; so, also, if after trial counsel desire such transcript, the request therefor shall be reduced to writing and signed by the counsel. Except where an appeal is taken to the Supreme Court, if after the trial no order or request is made as aforesaid, the stenographer shall be excused from making a transcript of his notes. 3.

1723. The stenographer's report of the proceeding, upon the trial shall not be transcribed and filed at the expense of the county (except as otherwise expressly provided by law) without a special order of the court (but this rule shall not apply where an appeal has been taken, 47), and in no case without having been first submitted to the judge and approved by him. When filed, notice shall be given by the stenographer to the counsel in the case, and unless exceptions to its correctness be filed within four days after such notice, the said report shall be taken to be correct. When exceptions are filed the prothonotary shall put the case upon the argument list. If the exceptions relate to the testimony, and the counsel fail to agree, the trial judge shall decide. If the exceptions be to the charge, the opinion of the trial judge, assented to by counsel on one side, shall be final. 32.

1724. The official stenographer is hereby excused from the duty of transcribing his notes after trial, and furnishing transcripts thereof, unless specially directed by the court so to do; except in cases where appeals have been taken to the Supreme Court, in which cases he shall forthwith transcribe his notes and file them of record without any further order. 12.

1725. In all cases in which stenographic notes are taken on the trial of any cause, the discretion of the court to excuse the stenographer in copying in long hand the notes taken, will be considered exercised and the consent of counsel given, unless, before the end of the term at which the case is tried, the counsel who desires to refuse to consent shall, in writing, give notice that he refuses to consent to the stenographer being excused: Provided, that this rule shall not be held or construed to affect

any cause wherein a writ of error or appeal is taken, or where the court shall order the notes to be filed by the stenographer. 16.

1726. The stenographer shall be excused from filing long-hand copies of his notes of evidence and the charge of the court in all cases, unless within four days after the verdict rendered, or judgment entered in cases tried without jury, the court, upon motion, shall grant a rule on him to file the same. 4, 37.

1727. The compensation of stenographers, appointed under section 6 of an Act entitled "An Act directing the appointment of stenographers in the several civil courts of this Commonwealth", etc., approved May 24th, 1887, P. L. 199, by any examiner, master, referee, commissioner or auditor appointed by the court in any suit, action or proceeding therein pending, when not fixed by agreement in writing, shall be as follows: Fifty cents per hour for time spent in attending hearings, at which the stenographer's presence shall be required, and nine cents per folio of one hundred words for transcribing evidence, when such transcription is required by said examiner, master, referee, commissioner or auditor. If either party shall require it, the stenographer shall, in transcribing, provide carbon copies for each party, at the rate of one cent per folio for one hundred words for each copy; in addition thereto the stenographer shall receive all travelling expenses reasonably incurred in pursuance of his appointment. 11.

1728. The stenographer shall note upon the record the time spent at each session, and his bill shall be submitted to the examiner, master, referee, commissioner or auditor for approval. 11.

### STUDENTS

[See Attorneys.]

### SUBPOENAS

[See also Attachments for Witnesses and Divorce.]

1729. No subpoena duces tecum for a public record or paper (or for books and papers quasi public, as bank, pipe line and railroad books, 14, 17, 18, 36, 50) shall be issued without a special order of the court or one of the judges thereof, on cause shown, 1, 5, 8, 14, 15, 16, 17, 20, 23, 24, 25, 46, 47, 49, 50,

and no order will be made for a subpoena duces tecum in such case, wherever an exemplification, certified or attested copy is competent primary evidence, except in very special cases, such as alleged forgery, alteration, etc. 18, 36.

1730. A subpoena duces tecum may issue to the prothonotary to produce any record before auditors, arbitrators or referees, but it shall not be returnable at any other place than the county seat, where the office of the prothonotary is kept. 33.

1731. Subpoenas for persons as witnesses (known to be such, and, 23) residing within the county shall be taken at least five days (four days 16, 39) previous to the day assigned for the trial of the action in which their attendance shall be required, or such action shall not be continued on account of the absence of any such witness, if he were or might be found at his residence within that period. But this rule shall not dispense with the obligation to take the deposition of any such witness where the party requiring his attendance knows previously to that period that such witness intends to be absent from the county at the time of the trial. 1, 16, 23, 39.

1732. Subpoenas in cases on the trial list will be made returnable at 10 A.M. of Monday, and 9 A.M. of Tuesday, Wednesday, and Thursday of each week, according to the position of the cases upon the list, and the direction of the court to the prothonotary on the settlement of the same. 23.

1733. For each week subpoenas for the first six cases on the trial list shall be returnable on Monday at 2 M., and the next succeeding six cases on Wednesday at 9 A. M., and for the remainder of the list on Friday at 9 A. M., unless otherwise specially ordered. 13.

1734. Subpoenas in all cases upon the several day lists after Monday shall be made returnable on the day preceding the day fixed for trial. 4.

## SURVEYS

[See Experts.]

**SUPREME COURT PAPER BOOKS**

1735. A copy of each paper book prepared for use in the Supreme Court, in any case heard and determined in either of the courts of this county, shall be filed in the law library, and one delivered to each of the judges of the court. 19.

1736. In every case taken by writ of error, appeal or certiorari to the Supreme Court, the attorney for the plaintiff in error shall at the time he serves his paper book on the defendant in error, leave two copies with the prothonotary, one to be filed in the case, and the other for the judge. The attorney for the defendant in error shall in like manner file two copies of the paper book of the defendant in error, at the time he serves a copy on the plaintiff in error. The record shall not be certified until this rule is complied with by the attorney for the plaintiff in error. 16.

1737. It shall be the duty of the prothonotary to promptly deliver to the judge the copies intended for him. 16.

**TERMS OF COURT**

1738 [The terms of court, if deemed by any one to be useful, can be found in Pepper & Lewis' Digest, page 734.]

**TIME**

1739. When by rule of court so many days notice is required to be given, the day on which the notice is served shall be included in the computation. 39.

1740. The time within which any act shall be done under these rules, shall be computed by excluding the day from which the count is made, and (including the day on which it is to be done, except when the act is to be done within a certain time, as within the first four days of the term, 6, 18, 37, 48) and time shall be computed as provided by the Act of 20th June, 1883. 16.

1741. In the computation of time under these rules of practice, the interval between the service of any notice and day of appearance, or any other interval, shall be computed by reckoning the first day, or day of service of notice inclusive, and the last day or day of appearance exclusive, 11, 26, 27, 33, 34,

40, 42, 43, 44; (and any period from and after any term shall be computed from the first day of the term. 28, 35, 36, 41). When the day of appearance falls on Sunday or a legal holiday, the party will have the following day to appear, plead, etc. 14, 17, 47, 50.

### TRESPASS

[See Pleading.]

### TRIAL

[See Trials.]

### TRIAL BY THE COURT

1742. The rules relative to trial by jury, so far as applicable, shall apply to suits in equity and actions at law, in which trial by jury is waived, and which are not referred by the parties. But all such cases shall be placed on the trial list after the cases for trial by jury, unless specially ordered otherwise. 37.

1743. The prothonotary will set down any cause which is to be tried by the court without a jury, for trial on any argument or motion day, at the request of either party, and proof of notice to the opposite party or his attorney fifteen days prior to said day. When so set down, such cases shall have precedence of argument cases, but not of trial by jury, or motions on regular motion days. 37.

1744. When the cause is submitted to the court for trial without a jury, it may be tried at any succeeding stated argument court, which will allow thirty days notice of the intention to try the cause, which must be given unless a shorter notice is agreed to, or upon application of both parties the court or judge will fix a convenient day for the trial, and notice of trial need not in such case be given. 16, 23, 39.

1745. In trials before the court without a jury, immediately after the arguments are concluded, counsel on each side shall hand to the trial judge a plainly written brief in two divisions; one division shall contain a statement divided into paragraphs of the facts as claimed by the parties respectively, each paragraph covering but a single fact, to which shall be added a

reference by pages to the evidence relied on as establishing it; the other division shall contain a statement of the several propositions of law, stated separately, which the judge is asked to affirm, and under each proposition the authorities relied on as supporting it shall be given. 3, 29.

1746. A book similar to the "watch book" shall be provided by the prothonotary, in which equity cases, and cases for trial by the court, without a jury, shall be set down by either party at least three weeks before the first day of the trial week, at which time a list of the cases shall be made out by the prothonotary. 9.

### TRIAL LISTS

[See also §§ 635, 965, 992, 1576 and 1577.]

1747. [In a number of the counties a book is kept in which shall be entered by the parties, their attorneys, or the prothonotary, the cases which are at issue. This book is variously called the watch book, trial order book, issue docket, issue list or calendar.]

1748. When a cause is put at issue, it shall, of course, be deemed the request of the parties that the same shall be reached and tried as provided by law. 7.

1749. No case shall be placed upon the trial list which is not at issue, 1, 2, 8, 12, 24, 25, 28, 35, 42, 46, 47, 49, 51, but if an issue be formed substantially by the pleadings, it shall be considered to all intents and purposes at issue, without a formal joinder, 6, which may be entered by the prothonotary, or supplied, if desired, at any time. 5, 10, 11, 13, 14, 15, 22, 23, 32, 33, 34, 36, 37, 40, 41, 43, 44, 45, 48.

1750. No cause shall be placed upon the trial list for any period, unless the same shall be at issue before the issuing of the venire for such period. 1, 8.

1751. No cause shall be placed upon the trial list while a rule for judgment for want of a sufficient affidavit of defence is pending. 47.

1752. On the Wednesday following the last day of each term, the prothonotary shall make up a calendar of all causes at issue, arranging such causes thereon in the order of their seniority. This calendar shall be hung up in his office for the inspection of all concerned. Within six days (eight days, 38)

after such calendar shall have been made out, either party may designate upon it such of the causes as he wishes preferred on the trial list for the next term, or at the next special or adjourned court for jury trials. At the expiration of the time aforesaid, the prothonotary shall make out a trial list, placing thereon the causes marked as aforesaid, and all other causes on the calendar or issue list. 7, 38.

1753. Any cause not at issue when the calendar is made up, but put at issue afterwards, may be placed on the trial list by either party, giving notice of trial to the other party or his attorney, in person, three weeks (six weeks, 34) before the term at which the intended trial is to take place; and the cause shall be placed on the trial list furnished to the court, and treated in the same manner as if placed on the list at the time it was made out. The expenses of such notice of trial shall be taxed as part of the costs of the term. 7, 34, 38.

1754. Either party or his counsel may, at least three weeks before the first ensuing day when civil cases are to be tried, furnish a list to the prothonotary of such cases at issue as he may wish to have tried, or may enter the same in the watch book kept at the prothonotary's office, and at least three weeks before said day the prothonotary shall make out a list of all cases so noted for trial, and place the same in some conspicuous part of his office, which shall be sufficient notice of trial to all parties concerned. 12, 51.

1755. When either party wishes to put down a cause for trial he shall enter the names of the parties, with the number and term of the case, in a trial list book in the prothonotary's office at least four weeks (twenty-five days, 24) before the first day of the term at which it is to be tried. From this book the prothonotary shall make up the trial list, and shall put it in the prothonotary's office, and furnish it to at least one newspaper at the county seat and to another at the principal town of the county, at least three weeks (four weeks, 42) before the first day of the term, 42, 47, should there be so many issues of the paper selected for the publication of the same. 24.

1756. (In Mifflin County, 20) either party, or his counsel, may, during any term, or within ten days thereafter, furnish to the prothonotary a list of such cases at issue as he wishes to have tried at the next term, or may give six weeks notice in

writing to the opposite party, or his counsel, that a cause at issue will be brought on for trial at the next term; all of which causes so noted for trial shall be forthwith entered by the prothonotary in a book to be kept by him for that purpose, 20, and at least thirty days before the term the prothonotary shall make out a list of all causes so noted for trial, and place the same in some conspicuous part of his office, which shall be sufficient notice of trial to all parties concerned. 25.

1757. The prothonotary shall keep a book to be called the "issue list", in which he shall enter and index every cause in which a plea is entered. The names of the parties, the term and number of the suit, and the plea and the date of filing, shall be stated in the entry in the book: Provided, if there be more than one plaintiff the name of the first one only on the record may be mentioned with the addition et al., except in suits by partnerships, and then the name of the firm shall be mentioned. The names of the defendants may be stated in the same manner, except when they sever in pleading, and then the name of each defendant shall be entered with the plea filed by each. If a special plea be filed in any case, the entry "special plea filed" shall be sufficient. 21.

1758. The party, his agent or attorney, shall furnish the prothonotary with a list of such causes on the issue list as he may wish to have placed on the trial list at the next court; and these shall be entered by the prothonotary in a book to be kept for that purpose, with the date on which the entry was made, and such entry, if made thirty days prior to the court, shall be sufficient notice of the trial. From the list thus furnished the prothonotary shall make out two trial lists, one for the first week, and one for the second and third weeks, placing upon the first not more than forty of the causes, and upon the second not more than fifty of the causes, unless otherwise ordered by the court, according to their priority of number and term; except that feigned issues shall be placed at the head of the first list; but the court may make a special order, giving priority to causes, where justice or law requires that a cause should have preference. 21.

1759. No cause shall be put upon the trial list by the prothonotary of his own motion; but when a cause is regularly at issue either party shall have the right to rule the same for



trial at the next term, which rule shall be entered in the watch book, and shall be sufficient notice to the opposite party ; but no cause shall be ordered for trial within six weeks of the ensuing term, unless entered in the watch book of the previous term. 26, 43, 44.

1760. In addition to the causes set down by the parties, the prothonotary shall, of his own accord, select the seven oldest causes on the docket, which may be at issue and not put down by either party, and these he shall also place on the list, publish, etc., like the others. 42.

1761. The parties to a cause at issue may, by mutual consent, add it to the trial list at any time. 42. It shall, however, be put at the foot of the list. 16, 39.

1762. The trial list shall be made up by the prothonotary (one week, 10 (three weeks, 34, 43) after one term for the next) (fifteen days, 15) (four weeks, 6, 17, 19, 22, 29, 39, 46, 50) (thirty days, 1, 2, 8, 13, 14, 16, 20) (thirty-five days, 4, 11, 45, 49) (forty days, 32) (six weeks, 9, 18, 26, 28, 33, 35, 36, 37, 40, 41, 44, 48) (seven weeks, 27) before the commencement of each term of court for the trial of jury causes, in the presence of such attorneys as may choose to attend, at an hour fixed by the prothonotary for the purpose, of which notice shall be posted on the bulletin board for one week previous thereto. 4.

1763. The trial lists shall be made up in the order of the dates on which they were ordered for trial on the issue docket, 1, 4, 5, 6, 10, 14, 18, 30, 32, 40, preferring such as are preferred by law, or rule or order of court. 17.

1764. In arranging the trial list, in the absence of any special order, the causes shall be put down in the order of seniority, except as otherwise provided by law or rule of court, 2, 3, 7, 8, 9, 11, 12, 13, 16, 19, 20, 22, 23, 25, 26, 27, 28, 29, 33, 34, 35, 36, 39, 41, 43, 45, 46, 48, 49, 50, 51, but any cause continued by consent shall lose its priority unless the court at the time specially mark it otherwise. 47.

1765. In actions founded on contract, and in actions of scire facias on judgment or recognizance, if the plaintiff's attorney will file a certificate setting forth that he verily believes there is no defence to the plaintiff's claim, such undefended cause shall take precedence on the list of the other causes. 16, 39, 42.

1766. In making up the trial list, precedence shall be given to the following class of cases [in various orders of precedence as among themselves]:

(a) Actions for the recovery of wages for manual labor, as provided by Section 1 of Act of 22d March, 1877, 2, 3, 7, 13, 14, 15, 18, 23, 27, 36, 37, 45, 48: Provided that a sworn statement of facts be first filed showing the plaintiff's claim to be for the wages of manual labor alone, and provided, also, that the court upon the trial may continue the same, and impose all the costs of the term upon the party who has ordered the case at the head of the list, if it appear that the action was not entitled to preference. 11.

(b) Feigned issues directed by the Orphans' Court (and Register of Wills, 3, 6, 7, 30, 36, 37, 38, 48) and Court of Common Pleas sitting in equity. 11, 13, 18, 22, 30, 45, 50, 51.

(c) Issues under the Sheriffs Interpleader Act, 2, 3, 6, 7, 9, 14, 16, 18, 20, 22, 23, 27, 30, 33, 39, 41, 47, 50, according to the term and number of the execution under which they have been directed. 11, 13, 19, 26, 28, 35, 37, 38, 45, 48.

(d) Issues in other interpleaders directed by the Court of Common Pleas, 6, 13, 36, 37, 45, 48, 50: Provided, that the money which may be the subject of controversy has been paid into court. 11.

(e) Issues on auditors' reports, and issues directed under § 2 of the Act of 20th April, 1846, (P. L., 411). 11.

(f) Issues framed on appeals from the reports of auditors of the accounts of the county, city, boroughs, townships and poor districts. 11.

(g) Suits for penalties for official misconduct under the Act of 15th April, 1834, relating to counties and townships, and county and township officers. 13, 18, 36, 45.

(h) Cases in which the Commonwealth is an interested party (to recover forfeitures, etc., 6, 37, 48), but the mere use of the name of the Commonwealth for the benefit of individuals shall give no title to preference. 13, 18, 36, 45.

(i) Actions of quo warranto. 13, 18, 36, 45.

(j) Cases involving the distribution of money arising from judicial sales. 7, 14, 16, 18, 19, 22, 23, 26, 27, 28, 33, 35, 36, 38, 39, 41.

(*k*) Proceedings in partition, either at common law or under the Acts of Assembly of this Commonwealth. 19.

(*l*) Mandamus cases. 18, 36.

(*m*) Divorce cases. 6, 18, 22, 27, 30, 36, 37, 48.

(*n*) Issues on opened judgments. 22.

(*o*) Cases which counsel have marked to be preferred. 7.

1767. Actions for the recovery of wages of manual labor, under the Act of 22d March, 1877, shall not be placed in advance of their regular position on the trial list, without an order of court made, upon examination of the statement of plaintiff's claim filed, in accordance with said Act. 1.

1768. If the Commonwealth is not interested in the event of a suit, such case, unless it be a quo warranto, shall not be entitled to priority of trial over other actions, although the name of the Commonwealth may be used as a party thereto. 7, 10, 11, 20, 25, 34, 38, 44, 46, 49.

1769. The prothonotary shall procure a suitable book in which to set down, in the order of time in which they were brought, every undetermined case on the dockets of the court, whether at issue or not, for the convenience of the court in making up the trial docket, and when a case is disposed of he shall mark it out by drawing over it a red line with a ruler. For this service he shall be allowed a tax or fee of twenty cents in each case. 42.

1770. All cases put down for trial shall be then marked "off" the issue list in red ink by the prothonotary, and shall not again be placed on the issue list. Cases not reached and tried at the week for which they have been published shall be marked "Remanets" by the prothonotary, and shall be placed in their order at the head of the next succeeding trial list, unless otherwise ordered by the court or a judge in vacation, or by agreement in writing of the parties concerned or their attorneys. 18.

1771. When a new trial has been granted, the cause shall be placed on the issue docket as of the day on which such new trial was granted, and when a venire de novo has been awarded by the Supreme Court, the cause shall be placed on the issue docket as of the day on which the record and remittitur is filed in this court. 29, 30.

1772. Causes on the list for one term which remain

untried shall be placed on the list for the next term in the same order as before. 22.

1773. Whenever a case shall have been twice continued by consent of parties, it shall go off the list, and shall not be again placed on the trial list except by order of court on cause shown. 34.

1774. When a cause is not reached, or is continued at the term for which it is set down for trial; or when a juror has been withdrawn, or the jury discharged without a verdict; or a venire facias de novo awarded by the Supreme Court and the record returned and filed; the cause shall be placed upon the issue list as of its original date. 37.

1775. A continued case must be ordered down anew at every succeeding term until disposed of, otherwise it will not be put upon the list, 1, and it shall take its place as of the date of continuance. 24, 40.

1776. Whenever a case is omitted from the trial list by a mistake of the clerk, either party shall have the right to order the same upon the trial list: Provided, ten days notice be given the opposite party or his attorney before the day on which the case is marked for trial. 1.

1777. None of the causes upon the trial list shall be continued to another term, unless at the joint request of counsel, signified by writing filed with the prothonotary at least three weeks (thirty days, 40), before the commencement of such period, 1, 8, after which leave of the court must be obtained upon cause shown. 40.

1778. The prothonotary shall put all the causes down, unless the counsel of both parties assent to leaving the cause off the list, which assent may be verbal at the time of making out the list. The prothonotary shall give verbal notice to the counsel at the county seat, of the time he is about to make out the list, so as to give them an opportunity to be present, and pass such causes as they choose. But his neglect in this respect shall be no ground for continuance. 18.

1779. The party ordering a case for trial may countermand the same, by giving the opposite party, or his counsel, three weeks (fifteen days, 28, 30, 35) (twenty days, 48) notice in writing, and paying intermediate costs. 19, 28, 30, 35, 38, 42. But if both parties have noted the cause for trial, neither shall be

permitted to countermand it without the consent of the opposite party. 20, 25, 36, 46, 48, 49.

1780. No cause after having been placed on the trial list shall be withdrawn therefrom, or continued by consent (except by leave of the court, 12, 16, 51) unless the party withdrawing it, or at whose instance it is continued, shall at the time of so doing, set forth, in writing, to be filed in the cause, reasonable ground for such withdrawal or continuance. 41.

1781. Attorneys or parties to any case upon the issue docket, and not upon the trial list, (may at any time, by agreement in writing, 17) direct the prothonotary to withdraw it from the issue docket, and when so withdrawn it shall not be replaced thereon except upon præcipe of an attorney. When so replaced it shall be placed at the foot of the list on said docket, as if put at issue of the date of the præcipe, 17, unless otherwise specially ordered by the court. 37.

1782. Cases may be stricken from the list by the prothonotary, on agreement in writing filed, at any time before the first day of the term. 32.

1783. When causes have been stricken off the written trial list by consent, they shall retain their position on the issue docket, until they shall have been so continued twice; and if so continued a third time they shall lose their position, and be placed at the foot of the issue docket. 27.

1784. Either party may apply to the judge at chambers (to the prothonotary, 42) for an order to strike from the list any cause which has been irregularly placed upon it. 16, 39, 42.

1785. Four weeks before the first day of the term fixed for the trial of civil cases, the prothonotary shall revise the list, dropping all cases countermanded, continued or otherwise disposed of, and adding from the issue list, in order, as many cases as have been dropped. 37

1786. When two weeks of the next term shall be for the trial of civil causes, and there are not more than thirty cases on the trial list, the whole number shall be placed for trial on the printed list for one week, and the second week of court may be dispensed with by a special order of the court, at its discretion. But when the whole number of cases on the trial list is greater than thirty, one-half of the whole number shall be placed for trial each of the two weeks: Provided, that in

making up the printed list for any term whereat two weeks shall be set apart for the trial of civil causes, if the issues to be preferred be more than twenty and less than thirty in number, fifteen thereof shall be placed at the head of the list for the first week, and the remainder thereof at the head of the list for the second week. If the whole number of the preferred cases amount to thirty or more, they shall be equally divided, and one-half thereof placed at the head of the list for each week, according to seniority. And provided, also, that at any time before the printed list shall be made up, the judge may, in his discretion, fix the number of cases that shall be set down for trial for any week. 7.

1787. On the Monday four weeks from the first day of each term at 1 P. M. the trial list shall be settled. Eight cases shall be marked for trial for the first week of court, and fifteen cases for each subsequent week. If the attorneys fail to mark that number, the prothonotary shall thereupon add a sufficient number to make the required list, taking the cases from the issue list in their order. 34.

1788. During each week of the term for the trial of civil causes (fifteen, 13) (eighteen, 18) (twenty, 16) (twenty-four, 39, 51) (twenty-five, 9, 30, 41, 47, 50) (twenty-six original cases and forty appeals, 3) (thirty, 4, 11, 24, 28, 35, 48) (forty, 2) (fifty, 6, 29) shall be assigned for trial each week. [Some courts fix three, some five, some ten, and some half the list for each day set.]

1789. (When a special court is convened, 47) the number of causes set down for trial, and the order of the same upon the list, shall at all times be subject to the order of the court. 27, 47. If the attorneys do not name sufficient causes, the number ordered by the court shall be made up from the issue list upon its order. 46.

1790. The list for the first week shall be for the trial of short causes, and shall include feigned issues, appeals from justices, action on notes, bonds, bills, book accounts, and other instruments of writing for the payment of money, and such other actions in which the attorney ordering the case on said list shall certify that in his opinion the evidence in the case will not take over four hours to be heard, and when the attorney on the opposite side, before the calling of the list, shall not certify

to the contrary. All other causes must be placed on the long list. 21.

1791. After the list of short causes has been called and continuances noted, the first twenty cases then remaining open for trial shall be fixed for the first Monday of the civil court, and the remainder of the list for the Wednesday following. After the long list has been called and continuances noted, the first fifteen cases shall be fixed for the second Monday of the civil court, the second fifteen for the following Wednesday, the third fifteen for the following Monday, and the remainder of the list for the following Wednesday. Cases on the long list undisposed of during the first week will preserve their priority during the second week. 21.

1792. Two courts shall be held daily for the trial of civil causes during the time fixed therefor, and the third judge not engaged in holding jury trials shall hear all arguments and motions. 21.

1793. The prothonotary shall make out the trial lists for the first and second weeks of each regular term, and for any adjourned or special court for jury trials, and for the third or more weeks at any one time, the list shall be made up by members of the bar settling the docket. 33.

1794. No trial list shall be made out for the first week of any general term, unless specially ordered by the judge. But a trial list shall be made out for the second week of each general term. 18.

1795. The prothonotary shall place no cause on the list for a second week of a term, or any subsequent week, while it stands for trial on the list of the first week, or of a prior week. 28, 33, 35.

1796. All causes regularly put down for trial shall be put on the issue list, and the prothonotary shall append to the list for the term his certificate that such causes have been set down for trial in the manner and within the time prescribed by the rules of court, and a copy put up in the office as required by the rules, and that they were at issue when set down. Such certificate shall be conclusive, and the court will hear no allegation against it, in regard to any cause which shall be at issue before or on the first day of the term. 42.

1797. The trial list as prepared by the prothonotary shall

be sufficient notice of trial to the parties in all cases contained therein. 2, 7, 8, 9, 13, 14, 15, 18, 19, 20, 22, 27, 28, 32, 33, 34, 35, 38, 39, 41, 43. [Some of the districts also require an advertisement of the list in the legal periodical and daily newspaper; others a posting in the prothonotary's office; others a delivery of a copy to counsel.]

1798. No mistake or neglect in the publication of the trial list shall be taken as good ground for continuance of a cause regularly on the list, 17, unless the party has been thereby misled, and neglected to prepare for trial, which must appear by affidavit, and then the case will be continued at his costs. 18, 28, 35.

1799. When a cause has been on the issue list and entitled to be placed on the trial list, under the rules, for more than a year, and not continued by the court on cause shown or by reason of not being reached, within that time, it shall be stricken from the list nisi by the prothonotary; and notice thereof shall be given by the prothonotary to the plaintiff and defendant, or their attorneys, within ten days thereafter. And at the second term after the order nisi the cause shall be stricken from the issue list absolutely, unless at that term, or prior thereto, a rule for trial be granted by the court or a judge in vacation, at the instance of the plaintiff, or the defendant, upon affidavit of a good, subsisting cause of action in the case at the time of making the affidavit. When a cause is stricken absolutely from the issue list, judgment of non pros under the rule may be entered by the prothonotary, and execution for costs issued as provided in other cases of non pros in these rules. 18.

1800. When a cause has been at issue one year without any rule or proceeding thereon (thirty days, 30) (ninety days, 28, 35, 41), notice of trial shall be given in writing by the party or his attorney, ordering the cause on the issue docket, to the opposite party. 28, 30, 35, 41.

1801. All causes that have been twice withdrawn from the list, or been twice continued by consent of the parties thereto shall, on all the trial lists subsequent to the last withdrawal or continuance, be disrated and ranked, and placed on such lists as if they had been severally brought or instituted at the date of the second withdrawal or continuance. And all causes that have been on the trial list three times, and continued or with-



drawn by counsel, shall be non-prossed by the prothonotary, unless cause be shown to the contrary by application to the court. 41.

1802. A printed calendar and trial list, for the use of the court officers and attorneys, containing a list of jurors (and their places of residence, 17) and all cases for trial or argument at the ensuing term, shall be prepared and printed under the direction of the court, and delivered to the court, and each (resident) member of the bar, 14, 16, 22, 42, 50 (one week after it is made out, 17) at least (one week, 47) (ten days, 7, 24) (four weeks, 9) (thirty days, 21) prior to the first day of each term of the court at which issues are to be tried, 9, 17, 20, 21, 37, 47, and six days prior to each argument court. 24. It shall be the duty of the crier to see to the printing and prompt distribution of the calendars and lists to the parties entitled thereto. 7.

### TRIALS

[See also Bills of Exceptions, Evidence and §§ 12-14, 105, 106, 108, 192, 193, 196-206, 400-402, 693, 726, 730, 731, 974, 1176, 1209-1212, and 1510.]

1803. [In several districts while the trial list is prepared by the prothonotary, the order in which cases shall be called for trial is arranged by the bar at a meeting called for that purpose.]

1804. A party requiring records or papers on file (other than the papers of the case before the court, 36) or records or papers from any of the public offices, must furnish the proper officer beforehand with a list of those required, so that no delay may occur during the trial, 17, 50. otherwise the court will not wait until they are brought from the office. 36, 40.

1805. If for any good and sufficient cause the attorneys desire to continue all the cases on the trial list for any court, the consent of the court or a law judge thereof shall be previously obtained. 46, 49.

1806. The trial list for each week of the court of common pleas shall be called on Monday morning of the week preceding (to determine what cases shall go upon the printed list for trial and to divide the list, 15) and no cause shall be continued after that day for any reason or excuse which then existed and was

known to the party, or could have been ascertained by reasonable diligence. 11.

1807. The lists made out by the prothonotary shall be called over by the court one week in advance of the time fixed for trial, up to which call causes may be continued by consent of parties, and after which no cause shall be continued by consent or otherwise, unless for sufficient cause shown to the court, and not existing or known at the date of such call. 10, 21.

1808. Upon the day appointed for taking up the civil list (unless prevented by other necessary business), the court will proceed to the trial of the causes on the list in the order in which they stand thereon, and all applications for continuance of causes or attachments for witnesses must then be made, as no cause will be continued after the first day of calling over the list for any reason or excuse which then existed and was known to the party, 14, 23, 27, 45 (except by consent of the opposite party, 22), and the party putting off the cause shall be liable to such order as justice may require. 6, 11, 13, 20, 25, 28, 34, 35, 43, 44, 46, 49. The practice of putting a cause at the foot of the list, on payment of costs till again reached, at the instance of one party only, is hereby abolished. A cause when reached may be put at the foot of the list by consent of both parties, or by the court, if neither be ready, 18, 33, but no cause shall be passed, without losing its precedence, unless by special leave of the court, 40, or the unanimous consent of the bar. 36.

1809. As soon after the meeting of the court in each week as is convenient, the causes set down for trial shall be called over in the order in which they stand upon the list. Motions for continuance shall then be made, and the continuance of a cause shall always rest in the discretion of the court, but will in no case be granted unless the party applying for the same has been prevented from being ready for trial by circumstances that due and reasonable diligence could not have foreseen and overcome. 6, 30. Motions for the continuance of causes on the list for the second week may also be made at the first meeting of the court, or at an earlier time for either week, on notice to the opposite counsel. 37. The first five cases open for trial on any trial list shall be required to be ready for trial on

the first day of the court, and shall not be put over, when called, except for such reason as would be good ground for continuance. 48.

1810. After reading over the list to ascertain what cases have been continued or are for trial, and to afford an opportunity to move for a continuance or for an attachment, etc., the court will proceed, as soon as the current business will permit, to take up the causes and dispose of them in their order, and if, in any cause, unless it be one in which an attachment has been issued, the parties are not ready when the cause is reached, it shall be put to the bottom of the list, not to be taken up until all the other cases are disposed of, 19, unless the court at the time directs otherwise. 16, 24, 42, 47.

1811. If a cause is not struck off the list for want of an issue, when the list is first called over, neither party shall object to the want of a formal issue as a ground for continuance, but the court will enter the general issue on the record, and the cause shall proceed to trial on such issue, with leave to add any other plea which justice may require. 5, 14, 26.

1812. Either party may, at any time after the posting of the trial list, apply to the court or to the president judge, after due notice to the opposite party or his attorney, for a continuance of any cause thereon, and whenever any case is continued by order of the court or judge, or by consent, such case shall, unless otherwise specially ordered, be placed at the foot of the watch book issue list. 6, 37.

1813. Motions for continuances may be heard and determined by the president judge at chambers, on two days notice to the opposite party or his attorney; the motion, with proof of notice and the order thereon, to be filed in the cause. 22.

1814. Reasonable notice shall be given to the adverse party of the time and place of an intended application for the continuance of a case on the trial list; the application shall be in writing, in the form of a motion, setting forth briefly the grounds on which the continuance is asked for; if the ground be the absence of a material witness, the name of the witness shall be stated; the application shall be signed by the person presenting it, and when successful it shall be filed; the prothonotary shall also enter on his minutes at which party's instance the continuance was granted, and in making up the

trial lists the dates of previous continuances, and upon which party's application, shall be stated. 3.

1815. No motion for a continuance will be entertained after calling over the list on Monday of each week, except for a cause arising thereafter. 29.

1816. When a cause is reached on the trial list it must be tried, or continued for cause, or non-suited, 2, 9, 15, 23, 43 (or transferred to the bottom of the list, 8, 10, 11, 12, 13, 20, 22, 25, 34, 44, 45, 46, 49, 51): Provided, the court may, in its discretion, set aside the non-suit, when deemed necessary for the purposes of justice, and upon such terms as it may think proper. 7.

1817. No case, regularly upon the trial list, shall be continued (more than once, 2) by the agreement of parties or counsel, 2, 3, 45, but only for cause shown to and allowed by the court, 4, 11, 14, 16, 29, 32, 51, or in vacation upon affidavit filed. 27.

1818. When a cause has been continued by consent of the parties, or of their counsel, at any two terms of the court, the prothonotary will, without further order, mark it "not to be brought forward", and such cases shall thenceforth take rank with actions begun upon the day of the second continuance. 8, 12, 20.

1819. All causes continued, except for legal reasons, or upon the recommendation of the court, shall be marked "continued by consent": Provided, however, that for cause shown the court may suspend the operation of this rule as to particular cases. 8, 12, 20.

1820. No cause on the trial list shall be continued (left open, 27) on account of the engagements or absence of counsel, unless the engagement be on public duty or the absence arise from sickness, 7, 10, 14, 16, 27, 38, 41, 42, and not then for more than one term for the same cause. 3, 9, 27, 28, 30, 33, 35, 41.

1821. No case shall be continued on account of the absence of any counsel fulfilling the duties of an officer of the State or general government, for more than one term, and at the first continuance on such ground the opposite party may have a rule of course for the employment of other counsel in the cause. 11, 45.

1822. The absence of an attorney or counsel shall not be deemed good reason for the continuance of a cause unless such absence result from sickness, or some special circumstances are shown to exist rendering his absence involuntary, and his attendance impracticable without manifest impropriety or serious personal sacrifice, and such grounds shall not be available when other counsel are concerned on the same side. The fact that an attorney concerned as such, in a cause, is a member of Congress, or the State Legislature, shall not be deemed sufficient ground for a continuance. 40.

1823. A cause will not be continued on account of the inability to attend court of any attorney engaged therein who is not a resident practitioner of the county. 7.

1824. No cause, when reached in order on the trial list, shall be left open, or continued in consequence of a pending engagement of counsel in any other than a court of this Commonwealth sitting in this county, or the district or circuit court of the United States for the eastern district of this State. 1.

1825. When more than one counsel are concerned on the same side, the cause shall not be left open on account of the sickness or absence of one of them, 10, 16, 29, 30, 39, 42, nor on account of any engagement out of the court in which the cause is pending, 4, 8, but in such case the cause may, by consent, be placed at the foot of the list. And if any counsel shall be actually engaged before one of the judges of the court in which the cause is pending, at the time of the calling of another cause for trial before another judge of the same court, in which he is also retained as counsel, such latter cause shall be left open, with the privilege of being called on by either party, immediately after the prior engagement shall be terminated, in preference to any other cause not then under trial, or previously left open under this rule. 1.

1826. No cause, when reached in its order upon either the trial or argument list, shall be continued, left open, or put at the foot of the list, by reason of the sickness, temporary absence on public business, or engagement of counsel in another court, or before another judge of the court in which the cause is pending, unless no one of the counsel concerned on the same side shall be able to conduct the trial or argument, 14 : Provided, that where more than one counsel are concerned on the same side of

a cause on trial before another court, no one shall be considered as engaged within the meaning of this rule, who, having a colleague in the cause at liberty to remain to the end of the trial, shall have concluded his address to the jury. And where more than one counsel are concerned on the same side of a cause on trial before another judge of the same court, in which the cause is pending, after the evidence is closed in such cause, no one shall be considered as engaged within the meaning of this rule, except the counsel on whom the duty of addressing the jury shall devolve: Provided also, that nothing in this rule contained shall prevent the continuance of a cause where the usual legal grounds therefor shall be laid before the court. 1.

1827. The engagement in any other court or business shall not be a cause for continuance, unless the engagement is on public duty (or in the Supreme Court, 23) or the absence arise from sickness. 39. If any counsel shall be actually engaged before one of the judges of this court at the time of the calling of the cause for trial before the other judge, said cause shall be left open, with the privilege of being called by either party immediately after the prior engagement shall be terminated, in preference to any other cause not then on trial, or previously left open under this section. 21, 23.

1828. It shall be the duty of counsel representing any case upon the trial list to be present during the sitting of the court, and when any case is reached for trial, and any counsel on either side shall be absent from the court, the jury shall be called as though he or they were present, and when the jury shall have been called and ten minutes (fifteen minutes, 22) have elapsed, the court may proceed forthwith to dispose of the case without further delay, 11, 45, if the opposite party requires it. 22.

1829. No continuance will be granted because of an outstanding commission or rule to take depositions, except upon clear proof that the party has exercised all due diligence in attempting to have the depositions taken and returned in time. 3.

1830. After Tuesday of a week of court no cause will be continued on account of the absence of a witness, except under special circumstances, of which the court shall judge. When a

cause is passed against the consent of a party, it shall always be at the cost of the party asking the delay. 6, 28, 30, 35.

1831. When application is made for the continuance of a cause on the trial list, because of the absence of a witness (not served with a subpœna, 1, 16, 39), ground must be laid by affidavit of the party or his agent, setting forth the fact or facts which it is believed the witness will prove, the grounds of belief that he will do so, the efforts made to procure his attendance, 45, specifying the same minutely and particularly, and the grounds for believing that a continuance will enable the party to procure the testimony (at a future trial, 19), which affidavit shall be filed of record, 8, and an admission in writing by the other party to be read in the cause, that the witness, if called, would testify as set forth in the affidavit, shall be a sufficient cause for refusing the application, 1, 3, 9, 10, 14, 21, 23, 28, 30, 32, 33, 35, 41, 43, unless the court, in the exercise of its discretion, shall deem otherwise. 11, 16, 39.

1832. The absence of a witness shall not hereafter be good ground for the continuance of the trial of a cause, unless the subpœna shall have been taken out and served on the witness a sufficient length of time before the said cause is regularly reached and called for trial, to have enabled the party desiring the testimony to have taken the deposition of the witness on the ordinary rule and notice of six days, unless the party can show special reasons, satisfactory to the court, to excuse his laches in not so doing. 7.

1833. The promise of a witness to attend at the trial will not be accepted as an excuse for his non-production, or for a failure to take his deposition. 3.

1834. Where a witness is non-resident of the county, his non-attendance shall not be cause for continuance of the case, unless the justice of the case requires it. The party desiring his testimony must have it taken by deposition. 16.

1835. Every application for continuance on account of the absence of material witnesses, must be made before the end of the second day of the term, otherwise it will not be granted; but this rule shall not apply where material witnesses have been in attendance on the court and have absented themselves during the term. 8, 12.

1836. No cause when reached on the trial list shall be

passed, on account of an attachment for witnesses, unless it shall have been applied for and issued within (an hour after, 1) the opening of the court, 10, on the day on which the cause is marked for trial, except it be shown that the witness or witnesses were in attendance at that time, and departed without leave. 1, 16.

1837. An outstanding attachment shall never be regarded as grounds for postponement or continuance of a cause, unless such attachment shall have been taken out at least one day before the cause is called for trial, and then always at the cost of the party applying for the attachment, unless the court shall order the costs of such postponement or continuance to abide the event of the suit: Provided, that this rule shall not apply in respect to the period of taking out an attachment, to cases called for trial on Mondays, nor where the witness in default was in attendance the previous day. 14.

1838. To the end that the due attendance of jurors and witnesses may be the better secured, the prothonotary, immediately after calling the general list of traverse jurors, each day shall read aloud this rule, viz. :

(a) When a juror fails to answer upon being called into the box, the prothonotary shall make a note thereof in the court minutes, and the juror shall not be allowed pay for that day, unless a satisfactory excuse be shown for such failure; and the court may also, in its discretion, impose a fine on such juror.

(b) If a witness is not present when called, and his absence causes delay, unless a sufficient cause is shown, no pay for that day shall be allowed him; and the court may also, in its discretion, impose a fine on such witness. 22.

1839. No cause, when first called, shall be continued in the absence of a witness or witnesses, but shall, if a material witness be absent, be placed at the foot of the general list, and be called again when reached—the party in the meantime taking proper measures to compel the witnesses' attendance—excepting, however, cases where from sickness, absence or other cause, the attendance cannot be had. 15, 32.

1840. Three consentable continuances shall constitute a discontinuance. 10, 40.

1841. All motions for the continuance or adjournment of causes upon the list for any day after Monday, shall be made



on the evening preceding the day fixed for trial, or at the opening of the court on the morning of said day. 4.

1842. The party moving for a continuance of a cause shall be ready with an affidavit of the facts alleged as the ground of the motion, where the same do not appear of record, 10, 21, or upon the pleadings and exhibits in the case; and no supplementary affidavits will be allowed. 16, 40.

1843. When a case is continued upon payment of costs, and the costs are not paid before or when the case is next reached for trial, the trial shall proceed, but the party in default shall not be permitted to offer any evidence; the court may, however, relieve a party from the payment of such costs on clear proof that his default is the result of poverty alone. 3.

1844. Where the payment of costs is prescribed as a condition for the continuance of a cause, the continuance shall not be entered until the costs are actually paid, unless the court shall otherwise direct. 2.

1845. If a case is continued at plaintiff's cost, a nonsuit shall be entered when the list is next called, unless said costs have been paid. If continued at defendant's cost, it shall go to the foot of the general list, and if the same are not paid when reached, the case shall go to trial. 15.

1846. Causes may be passed until Tuesday, or a subsequent day, when reached, in the discretion of the court, with the consent of counsel and without costs, or without such consent at the costs of the party making the application where a witness or party is sick, soon expected, or the like. No cause will be passed without the consent of a party without a rule for costs. Nor will counsel be allowed to consent to the passing of all the causes in which attachments have not been taken or duly prosecuted, but the same shall be tried when ordered by the court, or continued by consent, or on legal grounds. 18, 33.

1847. If either party wishes to use his adversary as a witness, he shall make the same effort to secure his attendance as in the case of other witnesses. 3.

1848. All causes shall be tried in the order in which they are placed upon the list, 22, unless by leave of the court or the unanimous consent of the bar. 8, 12, 25, 29, 46, 49, 51.

1849. Causes set down for trial in any week shall not be

continued to a subsequent week of the same term, unless the jury shall have been sworn during the week for which the same shall have been set down. 13.

1850. Particular days will not be assigned for the trial of cases out of their order. 3.

1851. The untried cases of each day shall have precedence until disposed of. 11.

1852. When the list in any room is disposed of, the judge shall take up cases from the list of the other room of the same court. 1.

1853. A jury will not be impaneled in any civil cause after twelve o'clock noon of Saturday, without the consent of counsel. 16, 39.

1854. When a cause is reached for trial, if the defendant does not appear, the court may, on motion, direct judgment to be entered as by default, without a verdict; and if there shall have been a previous judgment of a justice of the peace, award of arbitrators, or verdict in favor of the plaintiff, for a sum of money, the judgment to be entered shall be for such sum, with interest from the date of such judgment, award or verdict. 22.

1855. In all cases of appeals by defendants from the judgments of aldermen, justices of the peace or magistrates, where, in the calling of the case for trial, the defendant does not appear to prosecute his appeal, and the plaintiff is present and ready for trial, the court may, on motion of plaintiff's attorney, affirm the judgment, 1, 5, 9, 14, 17, 23, 27, 28, 33, 35, 36, 39, 41, 43, 50: Provided, that where there shall have been an award of arbitrators filed upon such appeal, judgment of affirmance of such award shall be entered, and when the award shall have been for a sum of money, the judgment shall be for that sum together with interest thereon from the day of filing the award, 8, or the day named in the report. 1, 23, 32, 36. If neither party appears, or the defendant does and the plaintiff does not, judgment of non pros shall be entered. 3.

1856. When there has been a compulsory arbitration of any case and an appeal taken, if the appellant does not appear for trial when the case is reached on the trial list, the court will, on motion of the opposite party, enter judgment for the amount awarded by the arbitrators with interest. 14.

1857. As soon as a case is attached for trial, the prothonotary shall hand all the pleadings to the judge presiding. 3.

1858. The counsel opening a case to the jury shall confine himself simply to a statement of the facts to be offered in evidence. 7, 38.

1859. The prothonotary, in all cases, whenever a witness is called to the stand to be qualified, shall present the book, and, if the witness decline taking it, saying he affirms, the prothonotary shall ask him if it is against his conscience to take an oath. If this question is answered in the affirmative, the prothonotary shall administer an affirmation. 2.

1860. The party calling a witness shall state briefly the point or points which it is proposed to establish by his testimony. 1, 8, 43, 45.

1861. The entire examination of a witness shall be conducted by only one of the counsel of each party, 7, 8, 14, 16, 20, 24, 25, 27, 29, 39, 43, 45, 46, 47, 49 (and the re-examination shall be confined to the matter of the cross-examination, 42) and while conducting the examination counsel shall assume and maintain a standing position. 3.

1862. Witnesses being sworn or affirmed shall proceed to relate all they know relevant to the issue, and shall not be interrupted or detained, in any part of the examination, for the purpose of writing down the testimony delivered, or any part of it. 2.

1863. The detention for the purpose of noting his testimony, of a witness under examination, shall be regulated by the discretion of the judge, in the particular cause on trial. 1, 8.

1864. The progress of the examination of a witness shall not be arrested or retarded, for the purpose of reducing any offer to writing, unless it be required by the court. 2.

1865. The object of the examination of a witness is to elicit the truth from the witness; the manner and order of the examination rests largely in the discretion of the trial judge. To abridge proceedings and speed the trial, counsel should promptly lead the witness to the material points on which he is to speak. Then the witness shall be permitted to state in a narrative form, without interruption from counsel, the material facts of which he has knowledge.

If counsel think the statement of the witness is not as full

and explicit as witness can make it, he may examine him fully (avoiding leading questions) as to any matter omitted, or left indefinite or obscure, but mere repetition must be avoided. 16.

1866. In examining witnesses counsel shall treat them fairly and without ill temper (shall not animadvert upon their testimony, or examine them in an angry or threatening manner, 28, 30, 33, 35) (nor will any altercation or controversy between counsel be permitted in regard to the mode of examining witnesses, or the questions to be submitted to them, 9, 41) or do unnecessary violence to their feelings. Attempts to browbeat a witness, or entrap him unfairly, will be rebuked by the court. All investigations shall be closely confined to the point to be investigated, and departures from the rule, unnecessary repetitions, or trifling with the witness, shall be at once the cause of dismissing him from the stand. Counsel persisting in putting questions to a witness after dismissal for these causes, shall be treated as guilty of a contempt of court. 18, 36, 40.

1867. Offers of testimony, and objections thereto, when requested by counsel, shall be made before the stenographer in a low tone of voice, so as not to be heard by the jury. 3, 12, 20.

1868. In discussing questions of testimony, the objection shall be concisely stated; one counsel only may then be heard in support of the offer, and lastly, one of the opposite counsel in reply. Any reference to the facts of the case (except such as may be absolutely necessary to explain the offer or objection) shall be avoided, and the observation shall, in letter and spirit, be addressed to the court alone, and be as brief as possible. 2.

1869. Arguments on questions of evidence (and questions of law arising incidentally in the trial, 45) shall only be heard at the request or by the consent of the trial judge, 43, who shall regulate the manner and time of speaking. 45.

1870. In all trials the order of proceeding shall be as follows, viz.: One of the counsel maintaining the affirmative of the issue shall open the cause, state the facts, and, if necessary, the principles of law involved (without argument, 36, 41, 48, but so that the relevancy of the facts may be understood, 6, 9, 18, 28, 30, 33, 35) and then call and examine the witnesses and read the papers. One of the opposite counsel shall then open his case, and proceed in like manner. 2, 16, 22, 34, 39, 42. But one counsel on either side will be permitted to examine or

cross-examine a witness (or in any way interfere in the same, further than to suggest questions to his colleague. 11, 23, 26, 43, 44). The re-examination of a witness shall be only in respect to explanation of new matter elicited on his cross-examination, unless with leave of the court where the matter has been overlooked in chief. 6, 16, 28, 30, 33, 35, 37, 48.

1871. The examination of witnesses shall be conducted as follows: The counsel calling the witness shall examine him, and having concluded may hand him over for further examination to his colleague; and he having concluded, the witness may be cross-examined by one of the counsel of the opposite party, and after him, by his colleague; who having concluded, he may be re-examined by the counsel who called him, in turn, as to matters arising out of the cross-examination; and so he may be re-cross-examined as to matters arising out of the re-examination. No counsel shall have more than one turn in the examination of a witness in chief, or on re-examination, cross-examination or re-cross-examination. 15, 32.

1872. After the evidence is closed, if the counsel on either side desire to obtain the charge of the court upon written points, he shall so state in order to obtain time to prepare them; otherwise no point will be received after the argument has commenced. 36.

1873. When the evidence is closed, one of the counsel on the affirmative side of the question shall sum up, stating all the points both of law and fact upon which he intends to rely, and reading all the authorities which he and his colleagues mean to produce; two of the counsel on the opposite side shall then speak in succession, and the remaining counsel on the affirmative shall then be heard in reply, and be confined to answering the points made by the opposing counsel, and to enforcing those made by his colleague, 16, 39, 41, 42, (or himself in the first summing up. 18). (All the counsel are to avoid going over the same ground with the preceding colleague. 2). Alternate speaking shall not be allowed. 2, 33, 42. In arguing incidental questions of law which may arise during the trial, the same rule of speaking shall be observed by counsel. 11, 23, 26, 34, 43, 44.

1874. After the evidence is closed, the case shall be argued to the court and jury as follows: One of the counsel having the

affirmative shall present to the court the points in writing, if any he has, upon which he desires the jury to be charged, together with the authorities on which he relies in support of them; the opposing counsel, not exceeding two in number, shall then speak successively, first reading their written points, if any, and presenting the authorities in support of them, and one of the counsel on the affirmative side shall be heard in reply, and shall be confined to the points made in the opening, and those made by the opposing counsel. 21, 28, 30, 33, 35, 36. (The court may permit but one counsel to sum up to the jury, in its discretion. 6, 48). The same order will be observed in the argument to the jury, but the court may, in its discretion, limit the argument to either court or jury to one counsel on a side, and in that case the counsel for the party having the burden of proof shall conclude, and the opposite party begin the argument to the jury. 37.

1875. If evidence has been received on behalf of each party, the counsel having the right on the pleadings to begin, shall sum up, stating explicitly the grounds upon which he intends to rely, and citing such authorities as he may deem pertinent. One of the counsel of the opposite party may then address the jury as fully as the nature of the defence may require. Afterwards the counsel who commenced the summing up may conclude, restricting himself to enforcing the grounds previously taken by him, and combatting the views of the opposite counsel. When the party not entitled to begin shall produce no testimony, the counsel of the other party shall be confined to his address in summing up, and shall not be heard in reply. 1, 15, 32.

1876. Where there is but one counsel on a side, the counsel having the affirmative shall open and close, except where the party not entitled to begin shall produce no testimony, in which case counsel for the other party shall be confined to his address in summing up, and shall not be heard in reply. 23.

1877. In cases where the plea is payment, payment with leave, and in other cases where the pleas confess and avoid the plaintiff's case, as also where under the rules of court, the plaintiff's case as set out in his affidavit of claim is admitted and the legal effect thereof is sought to be avoided by facts and

circumstances which non obstante constitute a sufficient defence, the defendant shall, in his argument to the jury, have the conclusion. 5.

1878. If the defendant enter the plea of payment and neglect to file any statement of special matter, he shall have the affirmative of the issue, including the right to the last argument to the jury. 10.

1879. If two counsel on either side sum up to the jury on the affirmative side of the issue, the one shall begin and the other conclude the argument. 7.

1880. Any attorney examined as a witness for his client shall not be permitted to address the jury without leave of the court. 7, 8, 26, 29, 47.

1881. On points submitted at a trial of a cause, the points on both sides shall be first read and the plaintiff shall begin and conclude, citing his authorities in the opening argument, and when counsel on one side only presents points, he shall begin and conclude. 10.

1882. In presenting points, counsel will note opposite each, such authorities as they rely upon in support thereof. 15.

1883. Points upon which the judge is requested to charge the jury shall be plainly written (and clearly and distinctly stated, 16, 28, 30, 35, 36, 40, 43, 48), and where it is practicable they shall be so framed that the answer of the court will be full, direct and explicit by a simple affirmation or negation. 23. A copy of the points shall be presented to the court (and one to the opposing counsel, 2, 3, 5, 6, 15, 16, 33, 37, 38, 41, 43, 45, 48) (at the close of the evidence and before the commencement of the summing up, 1, 2, 3, 8, 10, 13, 14, 15, 16, 17, 19, 30, 32, 33, 37, 40, 41, 43, 47, 50) (before the concluding counsel has addressed the jury on either side, 6, 7, 9, 11, 20, 25, 27, 28, 29, 34, 35, 38, 39, 42, 44, 46, 48, 49, 51) (before the argument has closed, 36, 45) (and read to the court and immediately filed, 19) or the judge may in his discretion refuse to charge the jury upon the points proposed. 1, 8, 17, 27, 30, 32, 36, 50. The trial will not be delayed to enable counsel to prepare their points, except in special cases, 43, when not more than fifteen minutes shall be allowed for that purpose. 3.

1884. When a request is made to the court to file the charge (the points must be presented, 28) the request must be made in writing (as soon as the evidence on both sides has closed, 2, 19) (before the party making the request proceeds with his testimony, 28, 35) (a reasonable time before the court begins to charge the jury, 36), otherwise the request will not be granted. 36.

1885. When the court is asked to charge that there is evidence from which a particular fact may be inferred, the point must specially set forth the facts which justify the inference, otherwise it will not be answered; or, if answered adversely, the party shall not be entitled to an exception. 27, 36.

1886. When there is a request to charge that there is no evidence of a particular fact, the opposite counsel, at the request of the court, shall indicate in writing the evidence of the fact relied on, otherwise he shall not be entitled to except to an answer affirming the point. 27, 36.

1887. If it be desired at the close of the charge to call the attention of the court to any matter connected with it, the same must be done in writing and handed up without verbal comment. 15.

1888. The presiding judge may, in his discretion, reserve points of law arising upon the trial, for argument and consideration, and may direct judgment to be entered, either upon the verdict or non obstante veredicto, according to his opinion on such questions, and in view of the facts found by the jury; and, for the purpose of aiding the court as to facts, the jury may find specially the facts in issue. Either party shall have the right to a bill of exceptions to the opinion of the court, as if the questions had been ruled on the trial of the cause, and he shall be allowed twenty days from the rendition of the judgment for the presentation of his bill. 15.

1889. If a point of law be reserved on the trial of a cause, the point and the facts on which it arises, must be stated on the record. 27.



**TRUSTEE ACCOUNTS**

[See Assignees, Trustees and Committees.]

**VIEWERS**

[See Condemnation Proceedings.]

**VIEWS**

[See Jury.]

**WRITS AGAINST EXECUTORS, Etc.**

[See Notices.]

**WRITS OF INQUIRY**

[See Assessment of Damages.]

**BY-LAWS****I.—Objects.**

SEC. 1. This Association is formed to advance the science of jurisprudence; to promote the administration of justice; to secure proper legislation; to encourage a thorough legal education; to uphold the honor and dignity of the Bar; to cultivate cordial intercourse among the lawyers of Pennsylvania; and to perpetuate the history of the profession and the memory of its members.

SEC. 2. It shall not take any partisan political action, nor endorse or recommend any person for any official position.

**II.—Members.**

SEC. 3. Those members of the Bar who signed the call for the convention at which this Association was formed, or who attended any meeting thereof, or who shall before the adjournment of the meeting held at Bedford Springs, July 10–11, 1895, pay the admission fee, and sign, or cause to be signed for them, a roll containing the charter and by-laws, are hereby declared to be active members of this Association.

SEC. 4. Any member of the Bar of the Supreme Court of Pennsylvania, residing and practicing in this State; any State or Federal Judge residing in this State; and any professor in a regularly organized law school in this State; who shall comply with the requirements hereinafter set forth, may become an active member upon approval by a majority of the Committee on Admissions.

SEC. 5. All applications for membership must be in writing, signed by the applicant, stating, *inter alia*, his name, age, residence and date of admission to practice in the Supreme Court, commission to the Bench, or appointment as professor in a regularly organized law school in the State; and endorsed by three or more members of the Association, and must be accompanied by the usual admission fee.

SEC. 6. Persons elected to membership must, within three months after notification of their election, sign, or cause to be signed for them, a roll containing the charter and by-laws, or such election shall become void.

SEC. 7. A list of applications admitted by the Committee of Admissions during the interim of the meetings of the Association, shall be reported at each annual meeting.

SEC. 8. Rejected applicants shall not be again proposed within one year after their rejection.

SEC. 9. Distinguished non-resident lawyers may be elected honorary members by a vote of the Association, and shall have a voice, but no vote, at meetings of the Association.

### III.—*Officers.*

SEC. 10. The officers shall be a President, a first, second, third, fourth and fifth Vice-President, a Secretary and a Treasurer. The offices of Secretary and Treasurer may be held by one person.

SEC. 11. The President shall preside at all meetings of the Association, and shall deliver at the annual meeting an appropriate address, with particular reference to any statutory changes in the State of public interest, and any needed changes suggested by judicial decisions during the year.

SEC. 12. The Vice-Presidents, according to number, shall act, when required, in the place of the President.

SEC. 13. The Secretary shall keep a record of the proceedings of the Association, and of such other matters as may be directed to be placed on the files of the Association; he shall keep an accurate roll of the officers and members, and notify them of their election or appointment on committees; he shall issue notices of all meetings; furnish the Treasurer with the names and addresses of persons elected members; conduct the correspondence of the Association; and keep its seal. He shall report to the Executive Committee, prior to the annual meeting, a summary of his transactions during

the year; and shall perform such other duties as may be required of him by the Association, the President or the Executive Committee. His books and papers shall at all times be open to the inspection of the Executive Committee, and he shall receive such compensation as shall be allowed by that committee.

SEC. 14. The Treasurer shall keep an accurate roll of the active members of the Association; notify members of their election to membership; collect, keep careful and regular book accounts of, and expend, under direction of the Association or the Executive Committee, all moneys of the Association; and shall exhibit at the annual meeting, and when directed by the Association or the Executive Committee, detailed statements of the moneys received and expended, the amounts due to and by the Association, and an estimate of the resources and expenditures for the ensuing year. His books and accounts shall at all times be subject to examination and audit by the Executive Committee, or by any special committee appointed for that purpose. He shall give bond in such sum as shall be required by the Executive Committee, and shall receive such compensation as that committee shall allow.

SEC. 15. Vacancies in the offices of the Association shall be filled by the Executive Committee, but no appointment shall be made to the office of President while any Vice-President is able and willing to serve.

#### IV.—*Elections.*

SEC. 16. The officers of the Association shall be elected at the annual meeting to serve for one year and until their successors are chosen.

SEC. 17. No member shall be elected President for two successive terms.

SEC. 18. Two persons residing in the same county shall not serve as Vice-Presidents at the same time; but, as far as practicable, they shall severally be chosen from different

sections of the State. If two from the same county are elected at one time, the one having the lowest vote shall be rejected, and a new vote taken to fill the office.

#### V.—*Meetings.*

SEC. 19. The annual meeting shall be held at such time and place as the Association shall select. In default of such selection, it shall meet at the same time and place as the last preceding annual meeting.

SEC. 20. Adjourned meetings shall be held at such time and place as the Association shall determine.

SEC. 21. Special meetings shall be called by the Secretary, when requested in writing by the President, the Executive Committee, or fifty members of the Association. Such request shall specify the purpose of the meeting. At special meetings no business shall be transacted except that stated in the call, unless by consent of four-fifths of the members present and voting.

SEC. 22. At all meetings fifty members shall constitute a quorum for the transaction of business.

SEC. 23. At least one month's notice shall be given of the annual meeting, and ten days' notice of adjourned or special meetings, by letter mailed to the last known address of each member.

SEC. 24. The Executive Committee and the Committee on Law Reform shall arrange for the reading of appropriate papers at the annual meeting, and for the opening of a discussion thereupon; and notice thereof shall be given to the members in the call for the meeting.

SEC. 25. At the annual and adjourned meetings the order of business, unless otherwise directed by a majority of members voting, shall be as follows :

1. Reading of the Minutes of the Preceding Meeting.
2. Report of the Executive Committee.
3. Report of the Treasurer.

4. Report of the Committee on Admissions.
5. Election of Members.
6. Nomination and Election of Officers.
7. Reports of other Standing Committees.
8. Reports of Special Committees.
9. Special Orders.
10. Unfinished Business.
11. New Business.

SEC. 26. Except as herein otherwise provided, the meetings shall be conducted according to the usual parliamentary rules; but, without leave of the Association, no member shall be permitted to speak more than ten minutes at any one time, or more than twice on the same subject.

SEC. 27. Except by leave of the Association or the Executive Committee, no one not a member shall be allowed on the floor while the meetings are in progress.

SEC. 28. No complimentary resolution shall be entertained relative to the reading of any paper by, or to the performance of any act or duty by, any officer or member of the Association.

SEC. 29. A stenographer shall be selected by the Executive Committee to report the proceedings of each meeting; and those proceedings, together with any papers read at the meeting, shall be printed, and a copy thereof sent to each member. If desired, twenty additional copies shall be sent to each member reading a paper by request. Copies shall also be sent to every Law Library in the State, to every other State Bar Association extending a like courtesy to this Association, and to every National Bar Association.

#### VI.—*Committees*

SEC. 30. The Standing Committees shall be an Executive Committee, a Committee on Admissions, a Committee on Grievances, a Committee on Law Reform, a Committee on Legal Education, and a Committee on Legal Biography.

SEC. 31. The Executive Committee shall consist of twenty-one members, who shall be elected by the Association, and who shall act as Trustees, exclusive of the President, Secretary and Treasurer, who shall be *ex-officio* members. They shall have general management of the affairs of the Association, make arrangements for meetings, including, as far as may be, the obtaining of reasonable accommodations at, and of reasonable transportation to and from, the place of meeting; shall order the disbursement of the funds of the Association; audit the accounts, and have such other powers as may be conferred on them by these by-laws or by a vote of the Association.

SEC. 32. The Committee on Admissions shall consist of nine members, chosen from different sections of the State. All applications for membership shall be referred to this committee. They shall report to the Association the names of such persons as they deem suitable for membership, and shall seek to bring in all the lawyers of the State fitted to become members. What occurs at the meetings of this committee shall be considered confidential, except such matters as shall be publicly reported to the Association. Any ten members may appeal, in writing, to the Association from the failure or refusal of this committee to report favorably any application for membership.

SEC. 33. The Committee on Grievances shall consist of five members. They shall hear all complaints preferred by one member against another for misconduct in his relations to the profession or to this Association, provided the same be in writing, particularly stating the matters complained of, and signed by the complainant. They may also hear any specific complaints made by any member, affecting the interest of the profession, the practice of law or the administration of justice; and may report thereon to the Association, with such recommendations as they deem advisable. No report shall be made adversely to any member until after notice to him, with full opportunity to defend and to meet his accusers and witnesses face to face. The adverse action of this committee

must be approved by a vote of not less than two-thirds of the members present and voting. What occurs at the meetings of this committee shall be considered confidential except such matters as shall be publicly reported to the Association.

SEC. 34. The Committee on Law Reform shall consist of eleven members, chosen from different sections of the State. They shall consider and report to the Association such amendments of the law as they shall deem beneficial, oppose such as they shall deem injurious, observe the practical working of the judicial system of the State, and recommend from time to time such action as they shall deem best.

SEC. 35. The Committee on Legal Education shall consist of one member from each judicial district in the State. They shall report from time to time such changes as they shall deem it is expedient to make in the system of legal education and of admission to the practice of law in the State.

SEC. 36. The Committee on Legal Biography shall consist of one member from each judicial district in the State. They shall provide for the preservation, among the records of the Association, of such facts relating to the history of the profession as may be of interest, and of suitable memorials of the lives and characters of deceased members of the Association.

SEC. 37. Unless otherwise provided for hereby or by the Association at its annual meeting, all Standing Committees and vacancies therein shall be filled by appointment of the President, to serve until the expiration of the next annual meeting and the appointment of their successors. They shall elect their own officers, make rules for their government, keep minutes of their proceedings, and make annual reports to the Association. They may provide, by rule, that formal matters requiring attention between meetings may be voted on by letter; and that a failure of any member to attend three successive meetings shall cause his membership in the committee to become vacant. The rules adopted by one committee shall govern the succeeding committees until altered thereby.



SEC. 38. Such other committees may be appointed or elected from time to time as shall be deemed expedient ; but, except by a vote of the Association, no matter shall be referred to a special committee which is within the province of any of the Standing Committees.

SEC. 39. In committees of nine or more, five shall constitute a quorum for the transaction of business ; and in committees of less than nine, a majority shall constitute a quorum. In case of necessity, the annual report of the Standing Committees may be prepared and adopted by less than a quorum.

#### VII.—*Dues.*

SEC. 40. The current year of the Association shall commence on the first day of July, and the annual dues shall be payable on that date. Active members shall pay five dollars per year. The admission fee of five dollars shall include the first year's dues. Honorary members shall pay no admission fee or dues.

SEC. 41. The Treasurer shall, after diligently seeking to collect the same, and with notice to the member of this by-law, report to the Executive Committee the names of all members who are one year in arrears for their dues, and that committee may, by rule or direct vote on that report, declare that, by reason thereof, such persons have ceased to be members of the Association.

#### VIII.—*Penalties*

SEC. 42. Any member may be suspended or expelled for misconduct in matters connected with the Association, or in his personal or professional relations, after conviction thereof by the Committee on Grievances, and the approval of such conviction by this Association.

SEC. 43. Conviction of any member for crime shall at once work a forfeiture of membership in the Association, which forfeiture shall continue until such conviction be set

aside or reversed ; but if it shall afterwards be made to appear that such member was wrongfully convicted, he may be re-elected to membership upon recommendation of the Committee on Admissions.

SEC. 44. If any member is disbarred from practice in the Supreme Court, or from the courts of the county in which he resides, such disbarment shall work a forfeiture of his membership, until the disbarment be set aside or reversed. Reinstatement to practice shall not reinstate to membership, unless by a vote of the Association upon recommendation of the Committee on Admissions.

SEC. 45. A member's interest in the property of the Association shall cease with his membership.

#### IX.—*Amendments*

SEC. 46. Amendments may be made to these by-laws only at an annual meeting, and by a vote of two-thirds of the members present ; and no amendment shall be considered (except by unanimous consent of those present) unless a copy of the same shall have been sent to the Secretary, and notice of the intention to offer the same shall have been included in the call for the annual meeting.

## PENNSYLVANIA BAR ASSOCIATION

### HONORARY MEMBERS

FIERO, J. NEWTON, . . . . . Albany, N. Y.  
 PARKER, CORTLANDT, . . . . . Newark, N. J.

### LIST OF MEMBERS BY COUNTIES

#### ALLEGHENY COUNTY

BOYCE, JAMES C., . . . . .	Pittsburg
BRECK, E. Y., . . . . . 116 Fourth avenue,	"
BROWN, MAJOR A. M., . . . . . Maeder Bld'g, Fifth ave.,	"
BROWN, JOHN D., . . . . . Maeder Bld'g, Fifth ave.,	"
BROWN, MARSHALL, . . . . . 157 Fourth avenue,	"
BROWN, THOMAS S., . . . . . 413 Grant street,	"
BURGWIN, AUGUSTUS P., . . . . . 150 Fourth avenue,	"
BURGWIN, GEORGE C., . . . . . 150 Fourth avenue,	"
CARPENTER, J. MCF., . . . . . 402 Grant street,	"
CHALFONT, GEO. N., . . . . . 402 Grant street,	"
COHEN, JOSIAH, . . . . . 85 Diamond street,	"
COTTON, EMMETT E., . . . . . 156 Fourth avenue,	"
CRAIG, EDWIN S., . . . . . 170 Fourth avenue,	"
DALZELL, HON. JOHN, . . . . . 170 Fourth avenue,	"
DAVIS, L. L., . . . . . Carnegie Building,	"
DICKEY, C. C., . . . . . 100 Diamond street,	"
ERRETT, W. R., . . . . . 110 Diamond street,	"
EVANS, J. A., . . . . . 170 Fourth avenue,	"
EWING, DAVID Q., . . . . . Carnegie Building,	"
FERGUSON, JOHN S., . . . . . 408 Grant street,	"
FRAZER, ROBERT S., . . . . . 110 Diamond street,	"
GORDON, GEORGE B., . . . . . 170 Fourth avenue,	"
GRAHAM, SAM'L J., . . . . . 424 Fourth avenue,	"
GUTHRIE, GEORGE W., . . . . . 100 Diamond street,	"
HALL, WM. M., JR., . . . . . Carnegie Building,	"
HAMILTON, GEO. P., . . . . . 149 Fourth avenue,	"
HERRIOTT, THOMAS, . . . . . 170 Fourth avenue,	"
IMBRIE, A. M., . . . . . 100 Diamond street,	"
ISRAEL, ABRAHAM, . . . . . 85 Diamond street,	"
KENNEDY, HON. JOHN M., . . . . . 85 Diamond street,	"
KENNY, CHAS. B., . . . . . 414 Grant street,	"
KNOX, P. C., . . . . . Carnegie Building,	"
LYON, WALTER, . . . . . 118 Diamond street,	"
MACFARLANE, JAMES R., . . . . . 100 Diamond street,	"

## ALLEGHENY COUNTY—continued

MACRUM, W., . . . . .	100 Diamond street,	Pittsburg.
MCCANN, DAVID S., . . . . .	96 Diamond street,	"
MCCLAY, SAMUEL, . . . . .	98 Diamond street,	"
MCCLUNG, HON. S. A., . . . . .	170 Fourth avenue,	"
MCCLUNG, W. H., . . . . .	170 Fourth avenue,	"
MCCOOK, WILLIS F., . . . . .	Carnegie Building,	"
MCGIRR, FRANK C., . . . . .	Fifth ave. and Grant st.,	"
MCKENNA, CHARLES F., . . . . .	135 Fifth avenue,	"
MCKENNAN, JOHN D., . . . . .	110 Diamond street,	"
MCCLEAVE, JOHNS, . . . . .		"
MEYER, HENRY, . . . . .	100 Diamond street,	"
MILLER, J. J., . . . . .	408 Grant street,	"
MILLER, JACOB H., . . . . .	129 Fifth avenue,	"
MINOR, WILLIAM E., . . . . .	91 Diamond street,	"
NEEPER, A. M., . . . . .	110 Diamond street,	"
NILES, ALFRED J., . . . . .	Carnegie Building,	"
ORR, CHARLES P., . . . . .	400 Grant street,	"
OSBURN, FRANK C., . . . . .	134 Fifth avenue,	"
OVER, HON. JONES W., . . . . .		"
PATTERSON, THOMAS, . . . . .	Carnegie Building,	"
PLUMER, L. M., . . . . .	170 Fourth avenue	"
PORTER, EDWIN L., . . . . .	433 Fifth avenue,	"
PORTER, HON. WILLIAM D., . . . .		"
REED, JAMES H., . . . . .	Carnegie Building,	"
RIDDLE, GEORGE D., . . . . .	410 Grant street,	"
ROBERTS, GEO. L., . . . . .	Carnegie Building,	"
RODGERS, W. B., . . . . .	98 Diamond street,	"
SANDERSON, JOHN F., . . . . .		"
SCANDRETT, R. B., . . . . .	Carnegie Building,	"
SCHOYER, SOL., JR., . . . . .	139 Fourth avenue,	"
SCOTT, WILLIAM, . . . . .	170 Fourth avenue,	"
SCULL, EDWARD G., . . . . .		"
SWEARINGEN, J. M., . . . . .	98 Diamond street,	"
SHAFER, JOHN D., . . . . .	184 Fourth avenue,	"
SHIELDS, JAMES M., . . . . .	161 Fifth avenue,	"
SHIRAS, GEORGE, 3d . . . . .	100 Diamond street,	"
SHIRAS, W. K., . . . . .	100 Diamond street,	"
SLAGLE, HON. JACOB F., . . . . .	100 Diamond street,	"
SMITH, EDWIN W., . . . . .	Carnegie Building,	"
SMITH, EDWIN Z., . . . . .	Carnegie Building,	"
STADTFELD, JOSEPH, . . . . .	94 Diamond street,	"
STERRETT, JAMES R., . . . . .	85 Diamond street,	"
STONER, J. M., . . . . .	110 Diamond street,	"

## ALLEGHENY COUNTY—continued

THORP, C. M., . . . . .	St. Nicholas Building,	Pittsburg.
TRENT, S. U., . . . . .	98 Diamond street,	"
WATSON, D. T., . . . . .	170 Fourth avenue,	"
WAY, WILLIAM A., . . . . .	Carnegie Building	"
WEIL, A. LEO, . . . . .	170 Fourth avenue,	"
WISE, J. H., . . . . .	91 Diamond street,	"
WHITE, HON. J. W. F., . . . . .		"
WHITE, JOHN NEWTON, . . . . .	Carnegie Building,	"
WOODWARD, MARCUS A., . . . . .	98 Diamond street,	"
YOUNG, JAMES S., . . . . .	98 Diamond street,	"

## ARMSTRONG COUNTY

BUFFINGTON ORR, . . . . .	Kittanning.
CRAWFORD, JOHN T., . . . . .	"
GRIER, C. ORR, . . . . .	"
LEASON, MIRVEN F., . . . . .	"
MCCAIN, JAMES H., . . . . .	"
NEALE, HON. JAMES B., . . . . .	"

## BEAVER COUNTY

LAIRD, FRANK H., . . . . .	Beaver.
MARTIN, J. RANKIN, . . . . .	"
MOORE, W. S., . . . . .	"
WILSON, HON. J. SHARP, . . . . .	"

## BEDFORD COUNTY

AKE, SAMUEL, . . . . .	Bedford.
CESSNA, HARRY, . . . . .	"
CESSNA, HOWARD, . . . . .	"
COLVINE, FREDK. E., . . . . .	"
COLVINE, RUSSELL H., . . . . .	"
FLETCHER, FRANK, . . . . .	"
HADERMAN, R. C., . . . . .	"
HALL, WILLIAM M., . . . . .	"
HORN, DANIEL S., . . . . .	"
JORDAN, JOHN H., . . . . .	"
KERR, EDWARD F., . . . . .	"
KING, ALEXANDER, . . . . .	"
LITTLE, ALVIN L., . . . . .	"

## BEDFORD COUNTY—continued

LONGENECKER, S. R., . . . . .	Bedford.
LONGENECKER, HON. J. H., . . . . .	"
MCMAMARA, ROBT. C., . . . . .	"
PENNELL, E. M., . . . . .	"
POINTS, MOSES A., (omitted in first Annual Report)	"
REYNOLDS, HON. JOHN M., . . . . .	"
SHELL, HON. WILLIAM P., . . . . .	"
TATE, H. D., . . . . .	"
WELLER, JOHN S., . . . . .	"

## BERKS COUNTY

BAER, HON. GEORGE F., . . . . .	518 Washington street, Reading.
DERR, CYRUS G., . . . . .	542 Court street, "
ENDLICH, HON. G. A., . . . . .	"
HEISTER, ISAAC, . . . . .	530 Washington street, "
MANGER, DAVID F., . . . . .	"
RICHARDS, LOUIS, . . . . .	520 Washington street, "
SCHAEFFER, D. NICHOLAS, . . . . .	526 Washington street, "

## BLAIR COUNTY

BELL, HON. MARTIN, . . . . .	Hollidaysburg.
CRAIG, J. H., . . . . .	Altoona.
DIVELY, AUGUSTUS V., . . . . .	"
FLICK, E. H., . . . . .	"
HAMMOND, WM. S., . . . . .	"
HEINDLING, H. T., . . . . .	"
LANDIS, HON. AUG. S., . . . . .	Hollidaysburg.
LEISENRING, J. L., . . . . .	Altoona.
MERVINE, NICHOLAS P., . . . . .	"
OWENS, G. LLOYD, . . . . .	Tyrone.
PATTERSON, JOHN K., . . . . .	Altoona.
WOODCOCK, W. T., . . . . .	Hollidaysburg.

## BRADFORD COUNTY

CLEVELAND, EMERSON J., . . . . .	Canton.
INGHAM, J. C., . . . . .	Towanda.
MAXWELL, WILLIAM, . . . . .	"
MERCUR, RODNEY A., . . . . .	"
ROCKWELL, DELOS, . . . . .	Troy.

## BUCKS COUNTY

DU BOIS, JOHN L., . . . . .	Doylestown.
GILKESON, A. WEIR, . . . . .	Bristol.
GILKESON, B. F., . . . . .	"
HARRIS, HENRY O., . . . . .	Doylestown.
KEELER, E. WESLEY, . . . . .	"
LEAR, HENRY, . . . . .	"
YARDLEY, ROBERT M., . . . . .	"
YERKES, HON. HARMANN, . . . . .	"

## BUTLER COUNTY

GREER, HON. J. M., . . . . .	Butler.
MCQUISTION, LEV., . . . . .	"
THOMPSON, JOHN M., . . . . .	"
VANDERLIN, J. C., . . . . .	"

## CAMBRIA COUNTY

BARKER, HON. AUGUSTINE V., . . . . .	Ebensburg.
BROWN, JOHN H., . . . . .	Johnstown.
DUFTON DONALD E., . . . . .	Ebensburg.
ENDSLEY, HARRY S., . . . . .	Johnstown.
EVANS, ALVIN, . . . . .	Ebensburg.
KUHN, HENRY H., . . . . .	Johnstown.
LITTLE, P. J., . . . . .	Ebensburg.
MARTIN, FRANK P., . . . . .	Johnstown.
MURPHY, ROBERT S., . . . . .	"
MYERS, H. H., . . . . .	Ebensburg.
MCNEELIS, ED. T., . . . . .	Johnstown.
O'CONNOR, FRANCIS J., . . . . .	"
ROSE, HORACE RAMSEY, . . . . .	"
ROSE, WILLIAM HORACE, . . . . .	"
STEPHENS, MARTIN B., . . . . .	"
STOREY, HENRY WILSON, . . . . .	"
SHOEMAKER, F. A., . . . . .	Ebensburg.

## CAMERON COUNTY

GREEN, B. W., . . . . .	Emporium.
HUNTLEY, GEORGE W., JR., . . . . .	"
JOHNSON, J. C., . . . . .	"
MCNARNEY, JAMES P., . . . . .	"
WALKER, J. M., . . . . .	"

## CARBON COUNTY

BARBER, LAIRD H., . . . . .	Mauch Chunk.
BERTOLETTE, FRED., . . . . .	"
MULHEARN, EDW. M., . . . . .	"
SHARKEY, FRANK P., . . . . .	"

## CENTRE COUNTY

BEAVER, HON. JAMES A., . . . . .	Bellefonte.
BLANCHARD, JOHN, . . . . .	"
BOWER, C. M., . . . . .	"
DALE, JOHN M., . . . . .	"
FURST, HON. AUSTIN O., . . . . .	"
KELLER, HARRY, . . . . .	"
ORVIS, ELLIS L., . . . . .	"

## CHESTER COUNTY

BINGHAM, ED. D., . . . . .	West Chester.
BUTLER, WILLIAM, . . . . .	"
CORNWELL, GIBBONS GRAY, . . . . .	"
CORNWELL, R. T., . . . . .	"
GHEEN, JOHN J., . . . . .	"
GILKYSON, H. H., . . . . .	Phoenixville.
HAUSE, J. FRANK E., . . . . .	West Chester.
HAYES, WM. M., . . . . .	"
HEMPHILL, HON. JOSEPH, . . . . .	"
HOLDING, COL. A. M., . . . . .	"
MONAGHAN, JAMES, . . . . .	"
MONAGHAN, R. JONES, . . . . .	"
RAMSEY, SAML. D., . . . . .	"
REID, ALFRED P., . . . . .	"
WAITWRIGHT, HARRY P., . . . . .	Phoenixville

## CLARION COUNTY

MOFFETT, JAMES T., . . . . .	Clarion.
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## CLEARFIELD COUNTY

BILGER, GEORGE M., . . . . .	Clearfield.
GORDON, HON. CYRUS, . . . . .	"
HAGERTY, M. A., . . . . .	"
KREBS, HON. DAVID L., . . . . .	"
MITCHELL, OSCAR, . . . . .	"
PATTERSON, W. H., . . . . .	Houtzdale.



CLEARFIELD COUNTY—continued

SMITH, ALLISON O., . . . . .	Clearfield.
SWOOPÉ, W. I., . . . . .	"
SWOOPÉ, ROWLAND D., . . . . .	Curwensville.
WILSON, S. V., . . . . .	Clearfield.

CLINTON COUNTY

GEARY, B. F., . . . . .	Lock Haven.
HARVEY, H. T., . . . . .	"
HIPPLE, T. C., . . . . .	"
KRESS, WILSON C., . . . . .	"
MERRILL, JESSE, . . . . .	"
MCCORMICK, S. M., . . . . .	"
MAYER, HON. C. A., . . . . .	"
PEALE, HON. S. R., . . . . .	"

COLUMBIA COUNTY

BARCLAY CHARLES G., . . . . .	Bloomsburg.
FREEZE, JOHN G., . . . . .	"
HERRING, GRANT, . . . . .	"
MCKILLIP, H. A., . . . . .	"
RHAWN, W. H., . . . . .	Catawissa.
SMALL, C. A., . . . . .	"

CRAWFORD COUNTY

KOHLER, OTTO., . . . . .	Meadville.
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CUMBERLAND COUNTY

ADDAMS, CHARLES P., . . . . .	Carlisle.
BIDDLE, HON. EDWARD W., . . . . .	"
GRAHAM, DUNCAN M., . . . . .	"
HENDERSON, HON. ROBERT M., . . . . .	"
HENDERSON, J. WEBSTER, . . . . .	"
LANDIS, JOHN B., . . . . .	"
LLOYD, HON. WM. PENN., . . . . .	Mechanicsburg.
SMEAD, A. D. BACHE, . . . . .	Carlisle.
SHELLEY, JOHN L., . . . . .	Mechanicsburg.
STUART, HUGH S., . . . . .	Carlisle.
SADLER, HON. W. F., . . . . .	"
TRICKETT, WILLIAM, . . . . .	"
WEAKLEY, J. M., . . . . .	"
WETZEL, JOHN W., . . . . .	"
WOODS, RICHARD W., . . . . .	"

## DAUPHIN COUNTY

ALLEMAN, J. S., . . . . .	21 N. Third street,	Harrisburg.
ALRICKS, LEVI B., . . . . .	207 Walnut street,	"
BAILEY CHARLES L., JR., . . . . .	22 N. Second street,	"
BACKENSTOE, C. H., . . . . .	105 N. Second street,	"
BERGNER, CHAS. H., . . . . .		"
BOWMAN, SIMON S., . . . . .		Millersburg.
BUFFINGTON, H. E., . . . . .		Lykens.
CARE, R. S., . . . . .	222 Market street,	Harrisburg.
CALDER, HOWARD L., . . . . .		"
DETWEILER, M. D., . . . . .	Court House,	"
DURBIN, JAMES C., . . . . .	4 Court avenue,	"
DULL, CASPER, . . . . .	26 N. Third street,	"
FOX, JOHN E., . . . . .	1 N. Market square,	"
GILBERT, LYMAN D., . . . . .	219 Market street,	"
HALL, LOUIS W., . . . . .	210 Walnut street,	Harrisburg.
HARGEST, THOMAS S., . . . . .	222 Market street,	"
HARGEST, WM. M., . . . . .	222 Market street,	"
HOLDEMAN, D. C., . . . . .		"
JACOBS, M. W., . . . . .	222 Market street,	"
KING, EDGAR L., . . . . .	219 Market street,	"
KUNKEL, GEORGE, . . . . .	15 N. Market square,	"
LAMBERTON, WILLIAM B., . . . . .	216 Market street,	"
LAMBERTON, JAMES M., . . . . .		"
MCCARRELL, HON. S. J. M., . . . . .	16 N. Market square,	"
MCCORMICK, HENRY B., . . . . .		"
MCPHERSON, HON. JOHN B., . . . . .		"
MEYERS, WM. K., . . . . .	20 S. Third street,	"
MILLAR, ALBERT, . . . . .		"
MITCHELL, E. B., . . . . .	16 N. Market square,	"
NEAD, BENJ. M., . . . . .	15 N. Market square,	"
NISSLEY, H. L., . . . . .	7 N. Third street,	"
NISSLEY, JOHN C., . . . . .	29 N. Second street,	"
NORRIS, A. WILSON, . . . . .		"
OLMSTEAD, HON. M. E., . . . . .	7 N. Third street,	"
OTT, FREDERICK M., . . . . .	222 Market street,	"
PATTERSON, JOHN E., . . . . .	222 Market street,	"
SHOEMAKER, HOMER, . . . . .		"
SHOPP, JOHN H., . . . . .	331 Market street,	"
SIMONTON, HON. J. W., . . . . .	317 N. Front street,	"
SNODGRASS, ROBERT, . . . . .	13 N. Third street,	"
SNYDER, EUGENE, . . . . .	10 N. Third street,	"
STAMM, A. C., . . . . .	7 N. Third street,	"
STRANAHAN, HON. JAS. A., . . . . .	15 N. Market square,	"

## DAUPHIN COUNTY—continued

THOMPSON, A. F., . . . . .	Lykens.
VANDYKE, T. KITTERA, . . . . .	Harrisburg.
WEISS, JOHN H., . . . . . 219 Market street,	"
WICKERSHAM, FRANK B., . . . . .	Steelton.
WOLFE, LE ROY J., . . . . . 22 N. Second street,	Harrisburg.

## DELAWARE COUNTY

BLISS, WARD R., . . . . .	Chester.
DARLINGTON, GEORGE E., . . . . .	Media.
HALL, E. H. . . . .	"
ROBINSON, HON. J. B., . . . . .	"
ROBINSON, V. GILPIN, . . . . .	"

## ELK COUNTY

AMES, W. W., . . . . .	Ridgway.
ARNOLD, N. T., . . . . .	"
LUCORE, RUFUS, . . . . .	"
MCCAULEY, C. H., . . . . .	"
RATHBUN, GEORGE A., . . . . .	"

## ERIE COUNTY

ALLEN, HON. GEORGE A., . . . . .	Erie.
DAVENPORT, HON. S. A., . . . . .	"
FORCE, J. M., . . . . .	"
GALBRAITH, HON. W. A., . . . . .	"
LAMB, T. A., . . . . .	"
MARSHALL, F. F., . . . . .	"
OLMSTEAD, C. GEORGE, . . . . .	Corry.
RILLING, HON. JOHN S., . . . . .	Erie.
ROSENZWEIG, L., . . . . .	"
SAWDEY, D. A., . . . . .	"
WHITTLESEY, E. L., . . . . .	"

## FAYETTE COUNTY

BOYD, A. D., . . . . .	Uniontown.
CAMPBELL, EDWARD, . . . . .	"
DETWILER, H. F., . . . . .	"
EWING, HON. NATHANIEL, . . . . .	"
FULTON, E. D., . . . . .	"
GUILER, W. G., . . . . .	"
HERTZOG, D. M., . . . . .	"
HOGG, WILLIAM A., . . . . .	"
HOPWOOD, R. F., . . . . .	"

## FAYETTE COUNTY—continued

HOWELL, G. D., . . . . .	Uniontown.
JEFFRIES, GEO. B., . . . . .	"
JOHNSON, W. J., . . . . .	"
KENNEDY, R. P., . . . . .	"
LINDSEY, R. H., . . . . .	"
MESTREZAT, HON. S. L., . . . . .	"
PLAYFORD, W. H., . . . . .	"
KEFOVER, CHAS. F., . . . . .	"
REPPERT, E. H., . . . . .	"
UMBEL, R. E., . . . . .	"
WORK, J. C., . . . . .	"

## FRANKLIN COUNTY

ALEXANDER, WILLIAM, . . . . .	Chambersburg.
BOWERS, O. C., . . . . .	"
BREWER, HON. W. U., . . . . .	"
GILLAN, W. RUSH, . . . . .	"
STEWART, HON. JOHN, . . . . .	"
MCDOWELL, JOHN M., . . . . .	"
OMWAKE, W. J., . . . . .	Waynesboro.
ROWE, HON. D. WATSON, . . . . .	Chambersburg.
SHARPE, WALTER K., . . . . .	"
WALTER, CHAS., . . . . .	"

## FULTON COUNTY

ALEXANDER, W. SCOTT, . . . . .	McConnellsburg.
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## GREENE COUNTY

CRAWFORD, R. L., . . . . .	Waynesburg.
SAYERS, JAMES E., . . . . .	"
WALTON, DANIEL S., . . . . .	"

## HUNTINGDON COUNTY

BAILEY, HON. JOHN M., . . . . .	Huntingdon.
BROWN, CHARLES G., . . . . .	"
LOVELL, K. A., . . . . .	"
ORLADY, HON. GEORGE B., . . . . .	"
WAITE, HAYES H., . . . . .	"
WILLIAMSON, HON. W. MCK., . . . . .	"

INDIANA COUNTY

CLARK, J. WOOD, . . . . .	Indiana.
ELKIN, HON. JOHN P., . . . . .	"
WHITE, HON. HARRY, . . . . .	"

JEFFERSON COUNTY

CARMALT, EDWARD A., . . . . .	Brookville.
CLARK, B. M., . . . . .	"
CORBET, CHARLES, . . . . .	"
GORDON, HON. CADMUS Z., . . . . .	"
MEANS, GEORGE W., . . . . .	"
REED, HON. JOHN W., . . . . .	"

JUNIATA COUNTY

CRAWFORD, CHARLES B., . . . . .	Mifflintown.
HOOPES, WILLIAM L., . . . . .	"
LYONS, HON. JEREMIAH, . . . . .	"
MCMEEN, ROBERT, . . . . .	"
PENNELL, F. M. M., . . . . .	"

LACKAWANNA COUNTY

AMERMAN, HON. LEMUEL, . . . . .	Scranton.
ARCHBALD, HON. R. W., . . . . .	"
BURR, JAMES E., . . . . .	Carbondale.
DAVIS, J. ALTON, . . . . .	Scranton.
EDWARDS, HON. H. M., . . . . .	"
KNAPP, HENRY, . . . . .	"
OAKFORD, J. W., . . . . .	"
PATTERSON, ROSWELL H., . . . . .	"
PRICE, SAMUEL B., . . . . .	"
SMITH, HON. PETER P., . . . . .	"
WARREN, MAJOR EVERETT, . . . . .	"
WATRES, HON. LOUIS ARTHUR, . . . . .	"
WELLES, CHARLES H., . . . . .	"
WILCOX, WILLIAM A., . . . . .	"
WILLARD, HON. E. N., . . . . .	"

LANCASTER COUNTY

ATLEE, WM. AUGUSTUS, . . . . .	Lancaster.
BROWN, J. HAY, . . . . .	"
ESHLEMAN, B. FRANK, . . . . .	"
ESHLEMAN, G. ROSS, . . . . .	"
HENSEL, HON. WM. U., . . . . .	"

## LANCASTER COUNTY—continued

HOLAHAN, THOMAS B., . . . . .	Lancaster.
HOSTETTER, ABRAHAM F., . . . . .	"
JOHNS, A. S., . . . . .	"
KAUFFMAN, ANDREW J., . . . . .	Columbia.
KAUFFMAN, CHRISTIAN C., . . . . .	"
LANDIS, CHARLES I., . . . . .	Lancaster.
NORTH, HON. HUGH M., . . . . .	"

## LAWRENCE COUNTY

HAZEN, HON. AARON L., . . . . .	New Castle.
MCCONAHY, JOHN G., . . . . .	"
MARTIN, HON. J. NORMAN, . . . . .	"
WINTERNITZ, B. A., . . . . .	"

## LEBANON COUNTY

CAPP, THOMAS H., . . . . .	Lebanon.
LIGHT, S. P., . . . . .	"
SCHOCK, GEORGE B., . . . . .	"
SHIRK, HOWARD C., . . . . .	"
WEIDMAN, GRANT, JR., . . . . .	"
*WEIDMAN, GRANT, . . . . .	"

## LEHIGH COUNTY

BIERY, JAMES S., . . . . .	Allentown.
DESHLER, JAMES B., . . . . .	"
HARVEY, HON. EDWARD, . . . . .	"
SCHAADT, JAMES L., . . . . .	"
WRIGHT, HON. R. E., . . . . .	"

## LUZERNE COUNTY

BEDFORD, GEORGE R., . . . . .	Wilkes-Barre.
BOHAN, FRANK C., . . . . .	"
FARNHAM, ALEXANDER, . . . . .	"
GARMAN, HON. JOHN M., . . . . .	Nanticoke.
KULP, GEORGE B., . . . . .	Wilkes-Barre.
LENAHAN, JOHN T., . . . . .	"
MCCLINTOCK, ANDREW H., . . . . .	"
MINER, SIDNEY R., . . . . .	"
MOORE, JOSEPH, . . . . .	"
PALMER, HON. H. W., . . . . .	"
RICE, HON. CHAS. E., . . . . .	"
SHOEMAKER, R. C., . . . . .	"

\*Died, November, 1895.

## LYCOMING COUNTY

AMES, HERBERT T., . . . . .	Williamsport.
BEEBER, J. A., . . . . .	"
CANDOR, ADDISON, . . . . .	"
FREDERICKS, J. T., . . . . .	"
HART, WILLIAM W., . . . . .	"
HICKS, T. M. B., . . . . .	"
METZGER, HON. JOHN J., . . . . .	"
MCCORMICK, HON. HENRY C., . . . . .	"
MCCORMICK, SETH T., . . . . .	"
MUNSON, C. LA RUE, . . . . .	"
PARSONS, HENRY C., . . . . .	"
READING, JOHN G., JR., . . . . .	"
REARDON, JOHN J., . . . . .	"
SPROUT, CLARENCE E., . . . . .	"

## McKEAN COUNTY

MULLIN, EUGENE, . . . . .	Bradford City.
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## MERCER COUNTY

GORDON, Q. A., . . . . .	Mercer.
WILLIAMS, ALFRED W., . . . . .	Sharon.

## MIFFLIN COUNTY

ELDER, RUFUS C., . . . . .	Lewistown.
McKEE, JOHN ANDREW, . . . . .	"
UTTLEY, T. M., . . . . .	"
WOODS, HON. JOSEPH M., . . . . .	"

## MONROE COUNTY

ERDMAN, W. A., . . . . .	Stroudsburg.
GEARHART, CICERO, . . . . .	"
STAPLES, CHARLES B., . . . . .	"
STORM, HON. JOHN B., . . . . .	"

## MONTGOMERY COUNTY

EVANS, MONTGOMERY, . . . . .	Norristown.
HOBSON, F. G., . . . . .	"
KNIFE, IRVIN P., . . . . .	"

## MONTOUR COUNTY

CHALFANT, CHARLES, . . . . .	Danville.
SCARLET, JAMES, . . . . .	"
WEST, WM. KASE, . . . . .	"

## NORTHAMPTON COUNTY

FOX, EDWARD J., . . . . .	Easton.
KIRKPATRICK, HON. WM. S., . . . . .	"
LOOS, WILLIAM C., . . . . .	Bethlehem.
STEELE, H. J., . . . . .	Easton.
STEWART, RUSSEL C., . . . . .	"

## NORTHUMBERLAND COUNTY

AUTEN, VORIS, . . . . .	Mt. Carmel.
BOYER, SOLOMON B., . . . . .	Sunbury.
CLEMENT, CHARLES M., . . . . .	"
GAITHER, PAUL H., . . . . .	"
ORAM, W. H. M., . . . . .	Shamokin.
SAVIDGE, HON. C. R., . . . . .	
WOLVERTON, HON. S. P., . . . . .	Sunbury.

## PERRY COUNTY

BAKER, LUKE, . . . . .	New Bloomfield.
SEIBERT, WILLIAM N., . . . . .	"
SEIBERT, WILLIAM S., . . . . .	"
SMILEY, CHARLES H., . . . . .	"

## PHILADELPHIA COUNTY

ADAMS, JOHN S., . . . . .	709 Drexel Building.
ALED0, E. J., . . . . .	707 Drexel Building
ADDICKS, WILLIAM H., . . . . .	850 Drexel Building.
ALLINSON, EDWARD P., . . . . .	726-731 Drexel Building.
ANDRE, JOHN K., . . . . .	818 Girard Building.
ARCHER, PIERCE, . . . . .	S. E. Cor. 15th and Market.
ARNOLD, M., . . . . .	3440 Walnut street.
ASHHURST, HON. RICHARD L., . . . . .	225 S. Sixth street.
ASHMAN, HON. WM. N., . . . . .	4400 Spruce street.
AUDENREID, CHARLES Y., . . . . .	505 Chestnut street.
BALLARD, ELLIS AMES, . . . . .	200 Girard Building.
BAMBERGER, ALBERT J., . . . . .	Ledger Building.
BAMBERGER, L. J., . . . . .	Ledger Building.
BARNES, J. HAMPTON, . . . . .	900 Girard Building.
BECK, JAMES M., . . . . .	608 Chestnut street.
BEEBER, DIMNER, . . . . .	426-431 Drexel Building.
BEITLER, HON. ABRAHAM M., . . . . .	City Hall.
BIDDLE, CHARLES, . . . . .	505 Chestnut street.
BIDDLE, HON. GEORGE W., . . . . .	505 Chestnut street.
BISPHAM, GEO. TUCKER, . . . . .	900 Girard Building.



## PHILADELPHIA COUNTY—continued

BLACK, EDGAR N., . . . . .	726 Drexel Building.
BONSALL, EDWARD H., . . . . .	813 Chestnut street.
BOSWELL, RUSSELL T., . . . . .	708 Drexel Building.
BOWMAN, WENDELL P., . . . . .	130 S. Sixth street.
BOYD, PETER, . . . . .	635 Walnut street.
BREGY, LOUIS, . . . . .	1001 Chestnut street.
BROWN, WM. FINDLAY, . . . . .	1001 Chestnut street.
BROWN, FRANCIS S., . . . . .	1001 Chestnut street.
BROWN, HENRY P., . . . . .	210 S. Seventh street.
BROWN, JOHN A., . . . . .	426 Library street.
BROWN, JOHN DOUGLASS, . . . . .	517 Drexel Building.
BUDD, HENRY, . . . . .	727 Walnut street.
BURNETT, WILLIAM H., . . . . .	400 Chestnut street.
BURTON, ARTHUR M., . . . . .	504 Walnut street.
CADWALADER, RICHARD M., . . . . .	710 Walnut street.
CAMPBELL, HON. J. D., . . . . .	Reading Terminal.
CAMPBELL, NEAL F., . . . . .	1118 S. Twelfth street.
CARSON, HAMPTON L., . . . . .	426 Drexel Building.
CARR, HON. WM. WILKIN, . . . . .	Post Office.
CATTELL, HENRY S., . . . . .	635 Walnut street.
CLAPP, B. FRANK, . . . . .	210 W. Washington square.
CLARK, JOHN A., . . . . .	430 Walnut street.
COLAHAN, JOHN B., JR., . . . . .	507 Drexel Building.
COLESBERRY, ALEX P., . . . . .	441 Chestnut street.
CONRADE, D. HOWARD, . . . . .	229 S. Sixth street.
COULSTON, J. WARREN, . . . . .	229 S. Sixth street.
CRAIG, SAMUEL S., . . . . .	203-5 Franklin Building.
CUSTIS, ALFRED FRANK, . . . . .	733 Walnut street.
CUYLER, THOS. DE WITT, . . . . .	725 Drexel Building.
DALE, RICHARD C., . . . . .	752 Bullitt Building.
DANIELS, BENJAMIN, . . . . .	608 Chestnut street.
DAVIS, G. HARRY, . . . . .	608 Chestnut street.
DECHERT, HENRY M., . . . . .	513 Drexel Building.
DECHERT, HENRY T., . . . . .	513 Drexel Building.
DEVELIN, JAS. AYLWARD, . . . . .	400 Chestnut street.
DICKSON, SAMUEL, . . . . .	752 Bullitt Building.
DRAKE, FREDERICK S., . . . . .	400 Chestnut street.
DUANE, RUSSELL, . . . . .	701 Drexel Building.
ELLIS, WILLIAM S., . . . . .	736 Drexel Building.
EMBERY, JOSEPH R., . . . . .	231 S. Sixth street.
ETTING, THEODORE M., . . . . .	725 Drexel Building.
EVANS, ROWLAND, . . . . .	225 S. Sixth street.
FENSTERMAKER, THOMAS A., . . . . .	625 Drexel Building.

## PHILADELPHIA COUNTY—continued

FISHER, SYDNEY G., . . . . .	328 Chestnut street.
FLANDERS, HENRY, . . . . .	419 Walnut street.
FOLZ, LEON H., . . . . .	210 S. Seventh street.
FOW, JOHN H., . . . . .	206 S. Seventh street.
FREEDLEY, ANGELO T., . . . . .	710 Walnut street.
FREEMANN, JOHN S., . . . . .	400 Chestnut street.
FRIES, HARRY K., . . . . .	605 Chestnut street.
FURTH, EMANUEL, . . . . .	435 Chestnut street.
FUTRELL, WILLIAM H., . . . . .	420 Walnut street.
GALLEN, JOHN C., . . . . .	726 Drexel Building.
GEST, JOHN M., . . . . .	400 Chestnut street.
GEYELIN, H. LAUSSAT, . . . . .	217 Girard Building.
GILL, HARRY B., . . . . .	328 Chestnut street.
GORMAN, WILLIAM, . . . . .	520 Walnut street.
GOWEN, FRANCIS I., . . . . .	420 Walnut street.
GREENE, COL. CHARLES S., . . . . .	458 City Hall.
GREW, WILLIAM, . . . . .	1335 Arch street.
GUILLOU, VICTOR, . . . . .	615 Walnut street.
GUMMEY, THOMAS A., . . . . .	418-20 Walnut street.
HAIG, ALFRED R., . . . . .	608 Chestnut street.
HANCOCK, HENRY J., . . . . .	709 Walnut street.
HANNA, HON. W. B., . . . . .	110 S. Thirty-eighth street.
HANNIS, WILLIAM C., . . . . .	526-31 Drexel Building.
HANSON, E. HUNN, . . . . .	707 Walnut street.
HARRINGTON, DAVID C., . . . . .	719 Walnut street.
HARRITY, HON. WILLIAM F., . . . . .	608 Chestnut street.
HART, GAVIN W., . . . . .	209 S. Sixth street.
HART, THOMAS, JR., . . . . .	210 S. Fourth street.
HARTMAN, J. FREDERICK, . . . . .	1001 Chestnut street.
HENRY, J. BAYARD, . . . . .	701-6 Drexel Building.
HEPBURN, W. HORACE, . . . . .	1335 Arch street.
HINCKLEY, ROBERT H., . . . . .	536 Drexel Building.
HOPKINSON, EDWARD, . . . . .	905 Walnut street.
HOPPER, HARRY S., . . . . .	514 Walnut street.
HUEY, SAMUEL B., . . . . .	550 Drexel Building.
HYNEMAN, SAMUEL M., . . . . .	717 Drexel Building.
JENKINS, HON. THEO. F., . . . . .	1200 Betz Building.
JOHNSON, JOHN G., . . . . .	1001 Chestnut street.
JOHNSON, WILLIAM F., . . . . .	Lippman Bld'g, 20 S. Broad.
JONES, JAMES COLLINS, . . . . .	460 Bullitt Building.
JONES, J. LEVERING, . . . . .	426 Drexel Building.
JUNKIN, GEORGE, . . . . .	532 Walnut street.
JUNKIN, JOSEPH DE F., . . . . .	532 Walnut street.

## PHILADELPHIA COUNTY—continued

KEATOR, JOHN F., . . . . .	400 Chestnut street.
KEATING, J. PERCY, . . . . .	725 Drexel Building.
KNEASS, HORN R., . . . . .	23 N. Juniper street.
LANDRETH, LUCIUS S., . . . . .	609 Drexel Building.
LEAMING, THOMAS, . . . . .	420 Walnut street.
LEACH, FRANK WILLING, . . . . .	733 Walnut street.
LEACH, J. GRANVILLE, . . . . .	733 Walnut street.
LEONARD, FREDERICK M., . . . . .	119 S. Fourth street.
LEVI, JULIUS C., . . . . .	Ledger Building.
LEWIS, FRANCIS D., . . . . .	411 Walnut street.
LEWIS, WM. DRAPER, . . . . .	738 Drexel Building.
• LOWREY, DWIGHT M., . . . . .	601 Drexel Building.
LOWRY, BENJ. H., . . . . .	664 Bullitt Building.
LUKENS, WILLIAM H. R., . . . . .	504-6 Girard Building.
MCCOLLIN, EDWARD G., . . . . .	514 Walnut street.
MCCOUCH, H. GORDON, . . . . .	664 Bullitt Building.
MCCULLEN, JOSEPH P., . . . . .	650 Drexel Building.
MCLOUGHLIN, EDWARD D., . . . . .	209 S. Sixth street.
MAGILL, EDWARD W., . . . . .	800 Girard Building.
MARTIN, J. WILLIS, . . . . .	709 Walnut street.
MAXWELL, ROBERT D., . . . . .	615 Walnut street.
MEIGS, WILLIAM M., . . . . .	216 S. Third street.
MELLORS, JOSEPH, . . . . .	528 Walnut street.
MERCER, GEORGE G., . . . . .	738 Drexel Building.
MEREDITH, WILLIAM M., . . . . .	227 S. Sixth street.
MERRILL, JNO. HOUSTON, . . . . .	625 Drexel Building.
MESSEMER, WILLIAM S., . . . . .	1432 South Penn square.
MILLER, E. SPENCER, . . . . .	231 S. Sixth street.
MILLER, N. DUBOIS, . . . . .	505 Chestnut street.
MONTGOMERY, W. W., . . . . .	209 Franklin Building.
MOON, R. O., . . . . .	1530 Chestnut street.
MOORE, ALFRED, . . . . .	300 Girard Building.
MOORE, ARTHUR, . . . . .	300 Girard Building.
MORRIS, WILLIAM, . . . . .	638 Drexel Building.
NEILSON, WM. D., . . . . .	726 Drexel Building.
NICHOLS, H. S. P., . . . . .	532 Walnut street.
O'CALLAGHAN, M. J., . . . . .	423 Walnut street.
OUTERBRIDGE, ALBERT A., . . . . .	608 Chestnut street.
PAGE, HOWARD W., . . . . .	726-731 Drexel Building.
PAGE, HON. S. DAVIS, . . . . .	726-731 Drexel Building.
PATTERSON, T. ELLIOTT, . . . . .	229 S. Sixth street.
PATTERSON, C. STEWART, . . . . .	Girard Building.
PATTERSON, G. STEWART, . . . . .	Girard Building.

## PHILADELPHIA COUNTY—continued

PAUL, J. RODMAN, . . . . .	505 Chestnut street.
PENNYPACKER, HON. S. W., . . . . .	Girard Building.
PERKINS, EDWARD L., . . . . .	110 S. Fourth street.
PENROSE, HON. BOIES, . . . . .	726-731 Drexel Building.
PEPPER, GEORGE WHARTON, . . . . .	701-6 Drexel Building.
PHILLIPS, ALFRED I., . . . . .	517 Drexel Building.
POTTER, SHELDON, . . . . .	400 Chestnut st., Room 27.
PRICHARD, F. P., . . . . .	1001 Chestnut street.
RAWLE, FRANCIS, . . . . .	328 Chestnut street.
READ, HON. JOHN R., . . . . .	328 Chestnut street.
REED, JOSEPH A., . . . . .	30 N. Seventh street.
REX, WALTER E., . . . . .	524 Walnut street.
RHOADS, J. HOWARD, . . . . .	514 Walnut street.
RHOADS, JOSEPH R., . . . . .	514 Walnut street.
RITER, HON. FRANK M., . . . . .	209 S. Sixth street.
ROBERTS, JOHN, . . . . .	290 Bullitt Building.
RODMAN, WALTER C., . . . . .	906 Betz Building.
ROGERS, JOHN I., . . . . .	Fidelity Mutual Building.
ROTHERMEL, P. F., JR., . . . . .	532 Walnut street.
RUMSEY, HORACE M., . . . . .	214 S. Seventh street.
SAMUEL, JOHN, . . . . .	216 S. Third street.
SAVIDGE, JOSEPH, . . . . .	608 Chestnut street.
SCHUCK, LOUIS F., . . . . .	16 N. Seventh street.
SCOTT, HENRY J., . . . . .	217 S. Sixth street.
SCOTT, JOHN, JR., . . . . .	750 Drexel Building.
SCOTT, JOHN M., . . . . .	625 Walnut street.
SCOTT, HON. JOHN, . . . . .	3808 Chestnut street.
SELLERS, JAMES C., . . . . .	438 Drexel Building.
SHAPLEY, RUFUS E., . . . . .	200 Girard Building.
SHARP, ISAAC S., . . . . .	603-5 Chestnut street.
SHEARER, ALBERT B., . . . . .	524 Walnut street.
SHERMAN, CHARLES P., . . . . .	1001 Chestnut street.
SHIELDS, A. S. L., . . . . .	114 S. Sixth street.
SHOEMAKER, JOSEPH H., . . . . .	123 S. Fifth street.
SHOYER, FREDERICK J., . . . . .	Broad and Chestnut streets.
SIMPERS, ROBERT N., . . . . .	18 S. Broad street.
SIMPSON, ALEX., JR., . . . . .	1335 Arch street.
SMITH, ALFRED P., . . . . .	602 Provident Building.
SMITH, WALTER GEORGE, . . . . .	505 Chestnut street.
SMITH, WM. RUDOLPH, . . . . .	505 Chestnut street.
SMITH, LEWIS LAWRENCE, . . . . .	Penn Mutual Building.
SPARHAWK, JOHN, JR., . . . . .	400 Chestnut street.
STAAKE, WILLIAM H., . . . . .	229 S. Sixth street.

## PHILADELPHIA COUNTY—continued

STENGER, HON. WILLIAM S., . . . . .	1001 Chestnut street.
STILLWELL, JAMES C., . . . . .	727 Walnut street.
STITZELL, HENRY FRANCIS, . . . . .	Betz Building.
STOEVER, WM. C., . . . . .	727 Walnut street.
STUTZBACH, MARTIN H., . . . . .	1328 Arch street.
SUTTON, W. HENRY, . . . . .	907 Walnut street.
TAYLOR, CARTER BERKLEY, . . . . .	706 Walnut street.
TERRY, HENRY C., . . . . .	506-8 Hale Building.
THOMAS, SAMUEL HINDS, . . . . .	210 S. Fourth street.
THOMPSON, HON. SAMUEL G., . . . . .	259 S. Fourth street.
*TITUS, HENRY C., . . . . .	128 S. Sixth street.
TODD, M. HAMPTON, . . . . .	731 Walnut street.
TODD, HENRY C., . . . . .	1414 S. Penn square.
TULL, JOSEPH L., . . . . .	634 Drexel Building.
VAIL, LEWIS D., . . . . .	504-6 Girard Building.
VALENTINE, JOHN K., . . . . .	210 S. Seventh street.
VAN DUSEN GEORGE R., . . . . .	750 Drexel Building.
VAN HORN, CHAS. F., . . . . .	571 Bullitt Building.
WALTON, HENRY F., . . . . .	818 Girard Building.
WAXLER, HON. WM. HALL, . . . . .	605 Walnut street.
WAYLAND, FRANCIS L., . . . . .	225 S. Sixth street.
WEAVER, JOHN, . . . . .	400 Chestnut street.
WEIMER, ALBERT B., . . . . .	512 Walnut street.
WETHERILL, CHARLES, . . . . .	418-20 Walnut street.
WHITE, ELIAS H., . . . . .	726 Drexel Building.
WHITE, RICHARD P., . . . . .	650 Drexel Building.
WHITE, WILLIAM, JR., . . . . .	225 S. Sixth street.
WILLIAMS, CARROLL R., . . . . .	608 Chestnut street.
WILLIAMS, J. HENRY, . . . . .	133 S. Twelfth street.
WILLIAMS, JAMES S., . . . . .	711 Drexel Building.
WILTBANK, WILLIAM W., . . . . .	400 Chestnut street.
WINTERSTEEN, A. H., . . . . .	900 Girard Building.
*WIREMAN, HENRY D., . . . . .	705 Walnut street.
WISTER, WM. ROTCH, . . . . .	131 S. Fifth street.
WOOD, R. FRANCIS, . . . . .	218 S. Fourth street.
WOODRUFF, CLINTON ROGERS, . . . . .	514 Walnut street.

## PIKE COUNTY

VAN ETEN, J. H., . . . . . Milford.

\* Died August, 1876.

\* Died May 30, 1896.

## POTTER COUNTY

HECK, A. S., . . . . .	Coudersport.
LEONARD, HON. FRED. C., . . . . .	"
OLMSTEAD, HON. A. G., . . . . .	"
PECK, J. NEWTON, . . . . .	"

## SCHUYLKILL COUNTY

LEUSCHNER, E. P., . . . . .	Pottsville.
MARR, WM. A., . . . . .	"
MOYER, JOSEPH W., . . . . .	"
ULRICH, J. O., . . . . .	Tamaqua.

## SNYDER COUNTY

BOWER, FREDERICK EVANS, . . . . .	Middleburgh.
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## SOMERSET COUNTY

BERKLEY, HARRY M., . . . . .	Somerset.
BIESCKER, FRED. W., . . . . .	"
HAY, A. L. G., . . . . .	"
KOOSER, F. J., . . . . .	"
LOWRY, J. C., . . . . .	"
PUGH, JAMES L., . . . . .	"
RUPPEL, W. H., . . . . .	"
SCOTT, JOHN R., . . . . .	"
SCULL, GEO. R., . . . . .	"
UHL, JOHN H., . . . . .	"
WALKER, C. W., . . . . .	"

## UNION COUNTY

BUCHER, HON. J. C., . . . . .	Lewisburgh.
GLOVER, HORACE PELLMAN, . . . . .	Mifflinburgh.
HAYES, ALFRED . . . . .	Lewisburgh.
LEISER, ANDREW ALBRIGHT, . . . . .	"
MCCLURE, HON. HAROLD M., . . . . .	"
STRAWBRIDGE, RALPH M., . . . . .	"

## VENANGO COUNTY

HANCOCK, HON. JAMES DENTON, . . . . .	Franklin.
HEYDRICK, HON. CHRISTOPHER, . . . . .	"
OSMER, J. H., . . . . .	"

## WARREN COUNTY

O. C. ALLEN, . . . . .	Warren, Pa.
BALL, D. I., . . . . .	"
HINCKLEY, WATSON D., . . . . .	"
LINDSEY, W. M., . . . . .	"
NEILL, SAMUEL T., . . . . .	"
NOYES, HON. CHARLES H., . . . . .	"

## WAYNE COUNTY

GREENE, HOMER, . . . . .	Honesdale.
KIMBLE, FRANK P., . . . . .	"
MUMFORD, E. C., . . . . .	"
SEARLE, ALONZO T., . . . . .	"
STOCKER, R. M., . . . . .	"
WILSON, HENRY, . . . . .	"

## WASHINGTON COUNTY

BRADEN, J. M., . . . . .	Washington.
BROWNSON, JAMES I., JR., . . . . .	"
MCCARRELL, L., . . . . .	"
MCILVAINE, HON. J. A., . . . . .	"
MCILVAINE, WINFIELD M., . . . . .	"
TAYLOR, J. F., . . . . .	"

## WESTMORELAND COUNTY

MOREHEAD, JAMES S., . . . . .	Greensburg.
ROBBINS, EDWARD E., . . . . .	"
WILLIAMS, VIN. E., . . . . .	"

## WYOMING COUNTY

LITTLE, W. E., . . . . .	Tunkhannock.
PYATT, JAMES W., . . . . .	"
TERRY, CHARLES E., . . . . .	"

## YORK COUNTY.

COCHRAN, RICHARD E., . . . . .	York.
HAWKINS, CHARLES H., . . . . .	"
HEIGES, GEORGE W., . . . . .	"
MILLER, W. A., . . . . .	"
NILES, H. C., . . . . .	"
ROSS, N. SARGENT, . . . . .	"
SCHMIDT, GEORGE S., . . . . .	"
STEWART HON. W. F. BAY, . . . . .	"
STRAWBRIDGE, JOSEPH R., . . . . .	"
TRIMMER, DANIEL K., . . . . .	"
WILLIAMS, SMYSER, . . . . .	"







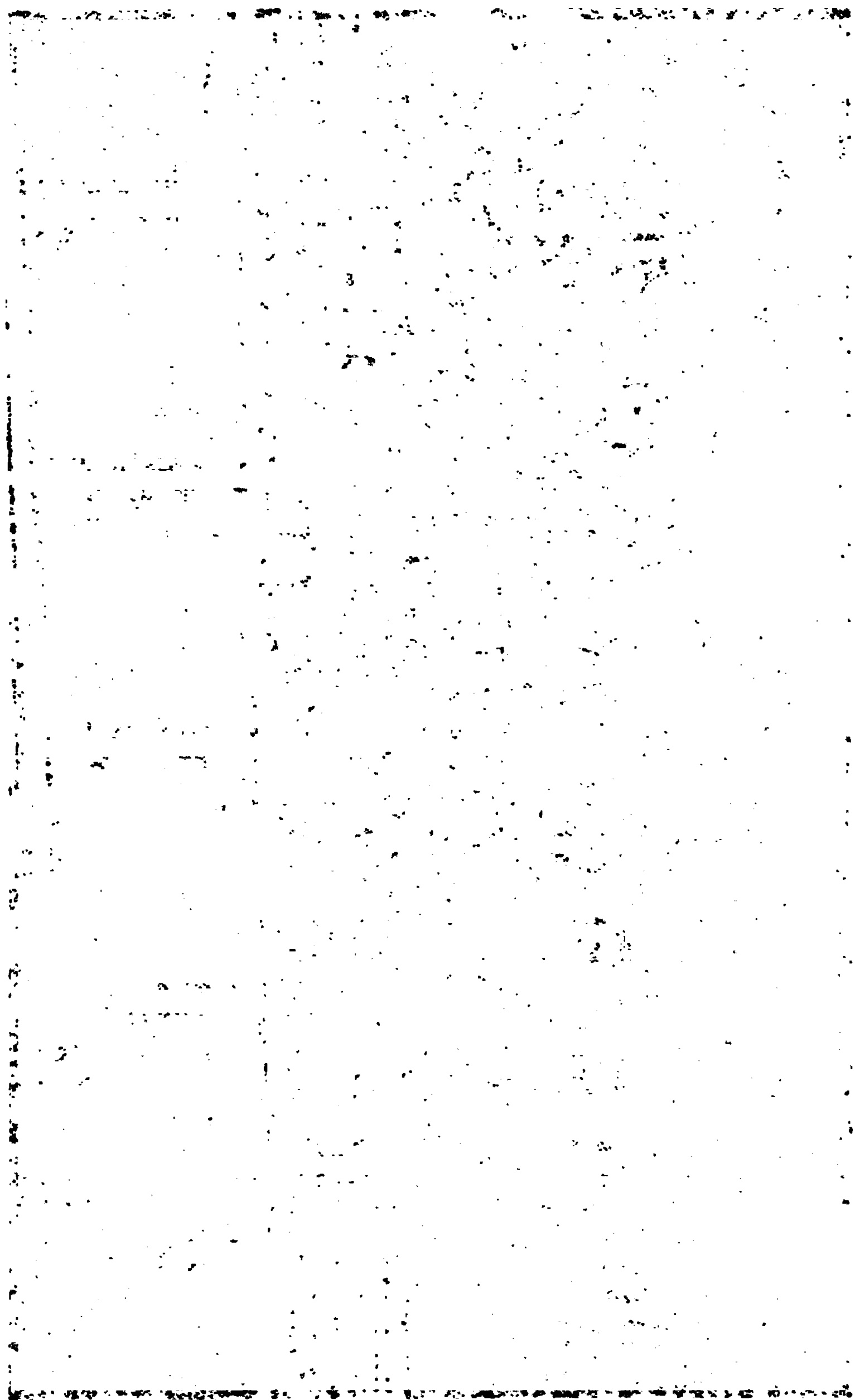
W. A. M.

LIST OF B  
BED.

CARROLL, J. J.  
DAVE, J. L.  
EVANS, J. A.  
GORDON, GEORGE D.  
HARRISON, GEORGE  
KENT, J. E.  
KNOW, F. C.  
MCCOON, WILLIAM F.  
MURPHY, FRANK  
MCKENNA, CHAS.  
MURPHY, WM.  
MINOR, WILLIAM  
NEEDLE, J. N.  
OKE, CHAS. P.  
PATTERSON, J.  
REED, J. H.  
RILEY, GEO.  
SANDERSON, J. I.  
SCOTT, EDWARD  
SHAW, JOHN D.  
SPOTTS, J. M.  
SLATER, HON. J. E.  
SMITH, EDWIN W.  
SMITH, EDWIN Z.  
TRENCH, J.  
WAY, WILLIAM A.  
WILL, A. L.  
YOUNG, JAMES

DAVE, FRANK  
WILSON, J. STARR

CESSA, HARRY  
COHAN, FRANK J.  
FITCHER, FRANK  
HARRISMAN, R. C.



LIST OF MEMBERS REGISTERING AT  
BEDFORD, 1896, BY COUNTIES

ALLEGHENY COUNTY

CARPENTER, J. McF., . . . . .	402 Grant street.,	Pittsburg.
DAVIS, L. L., . . . . .		"
EVANS, J. A., . . . . .	St. Nicholas Building,	"
GORDON, GEORGE B., . . . . .	Box 1037,	"
HAMILTON, GEORGE P., . . . . .	427 Fourth avenue,	"
KENNY, CHAS. B., . . . . .	414 Grant street,	"
KNOX, P. C , . . . . .	Carnegie Building,	"
MCCOOK, WILLIS F., . . . . .	Carnegie Building,	"
MCGIRR, FRANK C., . . . . .	Fifth ave. and Grant st.,	"
MCKENNA CHAS. F., . . . . .	135 Fifth avenue,	"
MACRUM, WM., . . . . .	434 Diamond street,	"
MINOR, WILLIAM E., . . . . .	413 Fourth avenue,	"
NEEPER, A. N., . . . . .		"
ORR, CHAS. P., . . . . .	400 Grant avenue,	"
PATTERSON, THOMAS, . . . . .	927 Carnegie Building,	"
REED, J. H., . . . . .	Carnegie Building,	"
RIDDLE, GEO. D., . . . . .		"
SANDERSON, J. F., . . . . .		"
SCULL, EDWARD B., . . . . .	St. Nicholas Building,	"
SHAFER, JOHN D., . . . . .	184 Fourth avenue,	"
SHIELDS, J. M., . . . . .	161 Fifth avenue,	"
SLAGLE, HON. J. F., . . . . .	100 Diamond street,	"
SMITH, EDWIN W., . . . . .	1030 Carnegie Bldg,	"
SMITH, EDWIN Z., . . . . .	Carnegie Building,	"
TRENT, S. U., . . . . .	432 Diamond street,	"
WAY, WILLIAM A., . . . . .	927 Carnegie Building,	"
WEIL, A. LEO, . . . . .	170 Fourth avenue,	"
YOUNG, JAMES S., . . . . .	98 Diamond street,	"

BEAVER COUNTY

LAIRD, FRANK N., , . . . . .	Beaver.
WILSON, J. SHARP, . . . . .	"

BEDFORD COUNTY

CESSNA, HARRY, . . . . .	Bedford.
COLVIN, FRANK E., . . . . .	"
FLETCHER, FRANK, . . . . .	"
HADERMAN, R. C., . . . . .	"

BEDFORD—continued

HORN, DANIEL S., . . . . .	Bedford.
LITTLE, ALVIN L., . . . . .	"
LONGENECKER, S. R., . . . . .	"
PENNELL, E. M., . . . . .	"
WELLER, JOHN S., . . . . .	"
CESSNA, HOWARD, . . . . .	Everett.

BERKS COUNTY

BAER, GEO. F., . . . . .	Reading.
ENDLICH, HON. G. A., . . . . .	"
HIESTER, ISAAC, . . . . .	"
MAUGER, DAVID F., . . . . .	"
RICHARDS, LOUIS, . . . . .	"

BLAIR COUNTY

CRAIG, J. H., . . . . .	Altoona.
DIVELLY, A. V., . . . . .	"
HAMMOND, WM. S., . . . . .	"
HEINSLING, H. T., . . . . .	"
MERVINE, N. P., . . . . .	"
PATTERSON, JOHN K., . . . . .	"
BELL, HON. MARTIN, . . . . .	Hollidaysburg.
LANDIS, AUG. S., . . . . .	"
WOODCOCK, W. I., . . . . .	"

BRADFORD COUNTY

MERCUR, RODNEY A., . . . . .	Towanda.
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BUTLER COUNTY

GREER, HON. J. M., . . . . .	Butler.
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CAMBRIA COUNTY

BARKER, HON. A. V., . . . . .	Ebensburg.
DUFTON, DONALD E., . . . . .	"
EVANS, ALVIN, . . . . .	"
LITTLE, P. J., . . . . .	"
MYERS, H. H., . . . . .	"
O'CONNOR, FRANCIS JOSEPH, . . . . .	Johnstown.

CARBON COUNTY

BARBER, LAIRD H., . . . . .	Mauch Chunk.
BERTOLETTE, FREDERICK, . . . . .	"

## CENTRE COUNTY

DALE, JNO. M., . . . . . Bellefonte.

## CHESTER COUNTY

BINGHAM, E. D., . . . . . West Chester.

GILKYSON, H. H., . . . . . Phoenixville.

HAUSE, J. FRANK E., . . . . . West Chester.

HAYES, WM. M., . . . . . "

## CLARION COUNTY

MAFFETT, JAMES T., . . . . . Clarion.

## CLEARFIELD COUNTY

WILSON, S. V., . . . . . Clearfield.

## CLINTON COUNTY

HIPPLE, T. C., . . . . . Lock Haven.

KRESS, W. C., . . . . . "

McCORMICK, S. M., . . . . . "

MAYER, HON. C. A., . . . . . "

MERRILL, JESSE, . . . . . "

PEALE, HON. S. R., . . . . . "

## CUMBERLAND COUNTY

BIDDLE, HON. EDWARD W., . . . . . Carlisle

WETZEL, J. W., . . . . . "

LLOYD, HON. WM. PENN., . . . . . Mechanicsburg

## DAUPHIN COUNTY

ALRICKS, LEVI B., . . . . . Harrisburg.

BERGNER, CHARLES H., . . . . . "

DULL, CASPER, . . . . . "

HALDEMAN, DONALD C., . . . . . "

HALL, L. W., . . . . . "

HARGEST, WM. M., . . . . . "

JACOBS, M. W., . . . . . "

McCORMICK, HENRY B., . . . . . "

McPHERSON, HON. JOHN B., . . . . . "

OLMSTED, M. E., . . . . . "

SIMONTON, HON. J. W., . . . . . "

SNODGRASS, ROBERT, . . . . . "

WOLFE, LE ROY J., . . . . . "

## FAYETTE COUNTY

BOYD, A. D., . . . . .	Uniontown.
EWING, HON. NATHANIEL, . . . . .	"
FULTON, ELWOOD D., . . . . .	"
HOGG, WILLIAM A., . . . . .	"
HOPWOOD, R. F., . . . . .	"
HOWELL, GEORGE D., . . . . .	"
JEFFRIES, G. B., . . . . .	"
LINDSEY, R. H., . . . . .	"
PLAYFORD, W. H., . . . . .	"

## FRANKLIN COUNTY

BREWER, HON. W. U., . . . . .	Chambersburg.
ROWE, D. WATSON, . . . . .	"
STEWART, HON. JOHN, . . . . .	"

## GREENE COUNTY

CRAWFORD, R. L., . . . . .	Waynesburg.
SAYERS, JAMES E., . . . . .	"

## HUNTINGDON COUNTY

BAILEY, J. M., . . . . .	Huntingdon.
BROWN, CHARLES G., . . . . .	"
ORLADY, HON. GEORGE B., . . . . .	"
WAITE, HAYES H., . . . . .	"

## INDIANA COUNTY

WHITE, HON. HARRY, . . . . .	Indiana.
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## LACKAWANNA COUNTY

AMERMAN, LEMUEL, . . . . .	Coal Exchange, Scranton.
BURR, JAMES E., . . . . .	Scranton and Carbondale.

## LANCASTER COUNTY

KAUFFMAN, ANDREW J., . . . . .	Columbia.
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## LUZERNE COUNTY

BEDFORD, GEORGE R., . . . . .	Wilkes-Barre.
KULP, GEORGE B., . . . . .	"
MCCLINTOCK, ANDREW H., . . . . .	"
PALMER, HON. HENRY W., . . . . .	"

## LYCOMING COUNTY

FREDERICKS, J. T., . . . . .	Williamsport.
METZGER, HON. JOHN J., . . . . .	"
MUNSON, C. LA RUE, . . . . .	"
PARSONS, H. C., . . . . .	"
READING, JOHN G., JR., . . . . .	"
SPROUT, CLARENCE E., . . . . .	"

## McKEAN COUNTY

MULLIN, EUGENE, . . . . .	Bradford City.
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## MONTGOMERY COUNTY

KNIPE, IRVIN P., . . . . .	Norristown.
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## NORTHAMPTON COUNTY

FOX, EDWARD T., . . . . .	Easton.
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## NORTHUMBERLAND COUNTY

SAVIDGE, HON. C. R., . . . . .	Shamokin.
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## PERRY COUNTY

SEIBERT, W. N., . . . . .	New Bloomfield.
SEIBERT, WM. S., . . . . .	"

## PHILADELPHIA COUNTY

ALLINSON, EDW. P., . . . . .	726 Drexel Building.
ARCHER, PIERCE, . . . . .	223 S. Sixth Street.
ASHHURST, RICHARD L., . . . . .	225 S. Sixth Street.
BEEBER, DIMNER, . . . . .	426 Drexel Building.
BIDDLE, CHARLES, . . . . .	505 Chestnut street.
BONSALL, EDWARD H., . . . . .	813 Chestnut street.
BUDD, HENRY, . . . . .	727 Walnut street.
CAMPBELL, HON. J. D., . . . . .	{ Twelfth and Market sts. Reading Railroad.
CARSON, HAMPTON L., . . . . .	426 Drexel Building.
COLAHAN, J. B., JR., . . . . .	601 Drexel Building.
DRAKE, FREDERICK J., . . . . .	400 Chestnut street.
EMBERY, JOS. R., . . . . .	1346 Chestnut street.
FENSTERMAKER, THOMAS A., . . . . .	605 Franklin Building.
GREW, WM., . . . . .	City Hall.
HENRY, J. BAYARD, . . . . .	701 Drexel Building.
MERRILL, JNO. HOUSTON, . . . . .	625 Drexel Building.
PATTERSON, T. ELLIOTT, . . . . .	Franklin Bldg., 133 S. 12th.
PENROSE, HON. BOIES, . . . . .	726 Drexel Building.
PEPPER GEORGE WHARTON, . . . . .	701 Drexel Building.



## PHILADELPHIA COUNTY—continued

REED, JOSEPH A., . . . . .	30 N. Seventh street.
RHOADS, J. HOWARD, . . . . .	514 Walnut street.
RHOADS, JOSEPH R., . . . . .	514 Walnut street.
ROGERS, JOHN I., . . . . .	Fidelity Mutual Building.
SIMPSON, ALEX., JR., . . . . .	1335 Arch street.
SMITH, WALTER GEORGE, . . . . .	505 Chestnut street.
TODD, M. HAMPTON, . . . . .	133 S. Twelfth street.
WEAVER, JOHN, . . . . .	400 Chestnut street.
WISTER, WILLIAM ROTCH, . . . . .	131 S. Fifth street.

## POTTER COUNTY

HECK, A. S., . . . . .	Coudersport.
OLMSTEAD, HON. A. G., . . . . .	"

## SNYDER COUNTY

BOWER, FREDERIC E., . . . . .	Middleburgh.
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## SOMERSET COUNTY

BERKLEY, HARVEY M., . . . . .	Somerset.
HAY, A. L. G., . . . . .	"
KOOSER, FRANCIS J., . . . . .	"
LOWRY, J. C., . . . . .	"
PUGH, JAMES L., . . . . .	"
RUPPEL, W. H., . . . . .	"
WALKER, C. W., . . . . .	"

## UNION COUNTY

HAYES, ALFRED . . . . .	Lewisburg.
LEISER, ANDREW ALBRIGHT, . . . . .	"
MCCLURE, HON. H. M., . . . . .	"
GLOVER, HORACE P. . . . .	Mifflinburgh.

## WASHINGTON COUNTY

BROWNSON, JAMES J., JR., . . . . .	Washington.
MCILVAINE, HON. JOHN A., . . . . .	"

## WESTMORELAND COUNTY

GAITHER, PAUL H., . . . . .	Greensburg.
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## YORK COUNTY

COCHRAN, RICHARD E., . . . . .	York.
HEIGES, G. W., . . . . .	"
STRAWBRIDGE, JOS. R., . . . . .	"
TRIMMER, D. K., . . . . .	"

## ALPHABETICAL LIST OF MEMBERS

AKE, SAMUEL, . . . . .	Bedford,	Bedford Co.
ADAMS, CHARLES P., . . . .	Carlisle,	Cumberland Co.
ALLEMAN, J. S., . . . . .	Harrisburg,	Dauphin Co.
ALRICKS, LEVI B., . . . . .	"	"
AMES, W. W., . . . . .	Ridgway,	Elk Co.
ALLEN, GEORGE A., . . . . .	Erie,	Erie Co.
ALEXANDER, WILLIAM, . . . .	Chambersburg,	Franklin Co.
ALEXANDER, W. SCOTT, . . . .	McConnellsburg,	Fulton Co.
AMERMAN, HON. LEMUEL, . . .	Scranton,	Lackawanna Co.
ATLEE, WM. AUGUSTUS, . . . .	Lancaster,	Lancaster Co.
AMES, HERBERT T., . . . . .	Williamsport,	Lycoming Co.
AUTEN, VORIS, . . . . .	Mt. Carmel,	Northumberland Co.
ADAMS, JOHN S., . . . . .	Philadelphia.	
ALEDO, E. J., . . . . .	"	
ADDICKS, WILLIAM H., . . . .	"	
ALLINSON, EDWARD P., . . . .	"	
ANDRE, JOHN K., . . . . .	"	
ARNOLD, M., . . . . .	"	
ASHURST, RICHARD L., . . . .	"	
ASHMAN, HON. WILLIAM N., . .	"	
AUDENREID, CHARLES Y., . . .	"	
ALLEN, O. C., . . . . .	Warren,	Warren Co.
ARNOLD, N. T., . . . . .	Ridgway,	Elk Co.
ARCHBALD, HON. B. W., . . . .	Scranton,	Lackawanna Co.
ARCHER, PIERCE, . . . . .	Philadelphia.	
BRECK, E. Y., . . . . .	Pittsburg.	
BROWN, MAJOR A. M., . . . .	"	
BROWN, JOHN D., . . . . .	"	
BROWN, MARSHALL, . . . . .	"	
BROWN, THOMAS S., . . . . .	"	
BURGWIN, AUGUSTUS P., . . . .	"	
BURGWIN, GEORGE C., . . . . .	"	
BUFFINGTON, ORR, . . . . .	Kittanning,	Armstrong Co.
BAER, GEORGE F., . . . . .	Reading,	Berks Co.
BELL, HON. MARTIN, . . . . .	Hollidaysburg,	Blair Co.
BARKER, HON. AUGUSTINE V., . .	Ebensburg,	Cambria Co.
BROWN, JOHN H., . . . . .	Johnstown,	"
BARBER, LAIRD H., . . . . .	Mauch Chunk,	Carbon Co.
BERTOLETTE, FRED., . . . . .	"	"
BEAVER, HON. JAMES A., . . . .	Bellefonte,	Centre Co.
BLANCHARD, JOHN, . . . . .	"	"
BOWER, C. M., . . . . .	"	"

BILGER, GEORGE M., . . . .	Clearfield,	Clearfield Co.
BARCLAY, CHARLES G., . . .	Bloomsburg,	Columbia Co.
BIDDLE, HON. EDWARD W., .	Carlisle,	Cumberland Co.
BAILEY, CHARLES L., Jr., .	Harrisburg,	Dauphin Co.
BACKENSTOE, C. H., . . . .	"	"
BOWMAN, SIMON S., . . . .	Millersburg,	"
BUFFINGTON, H. E., . . . .	Lykens,	"
BLISS, WARD R., . . . . .	Chester,	Delaware Co.
BOYD, A. D., . . . . .	Uniontown,	Fayette Co.
BOWERS, D. C., . . . . .	Chambersburg,	Franklin Co.
BREWER, HON. W. U., . . .	"	"
BAILEY, JOHN M., . . . .	Huntingdon,	Huntingdon Co.
BROWN, CHARLES D., . . . .	"	"
BURR, JAMES E., . . . . .	Carbondale,	Lackawanna Co.
BROWN, J. HAY, . . . . .	Lancaster,	Lancaster Co.
BIERY, JAMES S., . . . . .	Allentown,	Lehigh Co.
BEDFORD, GEORGE R., . . .	Wilkesbarre,	Luzerne Co.
ROHAN, FRANK C., . . . .	"	"
BEEBER, J. A., . . . . .	Williamsport,	Lycoming Co.
BOYER, SOLOMON D., . . . .	Sunbury,	Northumberland Co.
BALLARD, ELLIS AMES, . . .	Philadelphia.	
BAMBERGER, ALBERT J., . .	"	
BAMBERGER, L. J., . . . .	"	
BARNES, J. HAMPTON, . . .	"	
BECK, JAMES M., . . . . .	"	
BEEBER, DIMNER, . . . . .	"	
BEITLER, ABRAHAM M., . .	"	
BIDDLE, CHARLES, . . . . .	"	
BIDDLE, GEORGE W., . . . .	"	
BISPHAM, GEORGE TUCKER, .	"	
BLACK, EDGAR N., . . . . .	"	
BOSWELL, RUSSELL T., . . .	"	
BOWMAN, WENDELL P., . . .	"	
BOYD, PETER, . . . . .	"	
BREGGY, LOUIS, . . . . .	"	
BROWN, FRANCIS S., . . . .	"	
BROWN, HENRY P., . . . . .	"	
BROWN, JOHN A., . . . . .	"	
BROWN, JOHN DOUGLASS, . .	"	
BUDD, HENRY, . . . . .	"	
BURNETT, WM. H., . . . . .	"	
BURTON, ARTHUR M., . . .	"	
BOWER, FREDERICK EVANS, .	Middleburgh,	Snyder Co.
BERKLEY, HARVEY M., . . .	Somerset,	Somerset Co.
BIESCKER, FRED. W., . . . .	"	"

BUCHER, J. C., . . . . .	Lewisburg,	Union Co.
BRADER, J. M., . . . . .	Washington,	Washington Co.
BALL, D. I., . . . . .	Warren,	Warren Co.
BROWNSON, JAMES I., JR., . .	Washington,	Washington Co.
BOYCE, JAMES C., . . . . .	Pittsburg.	
BUTLER, WILLIAM, . . . . .	Westchester,	Chester Co.
BINGHAM, ED. D., . . . . .	"	"
BERGNER, CHARLES H., . . .	Harrisburg,	Dauphin Co.
BAKER, LUKE, . . . . .	New Bloomfield,	Perry Co.
BONSALL, EDWARD H., . . .	Philadelphia.	
BROWN, WILLIAM FINDLAY,	"	
COHEN, JOSIAH, . . . . .	Pittsburg.	
COTTON, EMMET E., . . . . .	"	
CRAIG, EDWIN S., . . . . .	"	
CESSNA, HARRY, . . . . .	Bedford,	Bedford Co.
CESSNA, HOWARD . . . . .	Everett,	"
COLVIN, FREDERICK E., . .	Bedford,	"
COLVINE, RUSSELL, H., . . .	"	"
CRAIG, J. H., . . . . .	Altoona,	Blair Co.
CLEVELAND, EMERSON J., . .	Canton,	Bradford Co.
CORNWELL, GIBBONS GRAY .	Westchester,	Chester Co.
CORNWELL, R. T., . . . . .	"	"
CARE, R. S., . . . . .	Harrisburg,	Dauphin Co.
CALDER, HOWARD L., . . . .	"	"
CAMPBELL, EDWARD, . . . .	Uniontown,	Fayette Co.
CLARK, J. WOOD, . . . . .	Indiana,	Indiana Co.
CLARK, B. M., . . . . .	Brookville,	Jefferson Co.
CORBET, CHARLES, . . . . .	"	"
CRAWFORD, CHARLES B., . .	Mifflintown,	Juniata Co.
CAPP, THOMAS H., . . . . .	Lebanon,	Lebanon Co.
CANDOR, ADDISON, . . . . .	Williamsport,	Lycoming Co.
CHALFANT, CHARLES, . . . .	Danville,	Montour Co.
CLEMENT, CHARLES M., . . .	Sunbury,	Northumberland Co.
CAMPBELL, NEAL F., . . . .	Philadelphia.	
CARSON, HAMPTON L., . . . .	"	
CATTELL, HENRY S., . . . .	"	
CLAPP, B. FRANK, . . . . .	"	
CLARK, JOHN A., . . . . .	"	
COLAHAN, JOHN B., JR., . . .	"	
COLESBERRY, ALEX. P., . . .	"	
CONRADE, D. HOWARD, . . . .	"	
COULSTON, J. WARREN, . . . .	"	
CRAIG, SAMUEL S., . . . . .	"	
CUSTUS, ALFRED FRANK, . . .	"	

CUYLER, THOMAS DE WITT, . . .	Philadelphia.	
COCHRAN, RICHARD E., . . .	York,	York Co.
CHALFANT, GEORGE N., . . .	Pittsburg.	
CARPENTER, J. McF., . . .	"	
CRAWFORD, JOHN T., . . .	Kittanning,	Armstrong Co.
CRAWFORD, R. L., . . .	Waynesburg,	Green Co.
CARMALT, EDWARD A., . . .	Brookville,	Jefferson Co.
CARR, HON. WM. WILKIN, . . .	Philadelphia,	
CADWALADER, RICHARD N., . . .	"	
CAMPBELL, HON. JOHN D., . . .	"	
DALZELL, HON. JOHN, . . .	Pittsburg.	
DAVIS, L. L., . . .	"	
DICKEY, C. C., . . .	"	
DERR, CYRUS G., . . .	Reading,	Berks Co.
DIVELEY, AUGUSTUS G., . . .	Altoona,	Blair Co.
DU BOIS, JOHN L., . . .	Doylestown,	Bucks Co.
DUFTON, DONALD E., . . .	Edensburg,	Cambria Co.
DETWEILER, M. D., . . .	Harrisburg,	Dauphin Co.
DURBIN, JAMES C., . . .	"	"
DULL, CASPER, . . .	"	"
DARLINGTON, GEORGE E., . . .	Media,	Delaware Co.
DAVENPORT, S. A., . . .	Erie,	Erie Co.
DETWILER, H. F., . . .	Uniontown,	Fayette Co.
DAVIS, J. ALTON, . . .	Scranton,	Lackawanna Co.
DESHLER, JAMES B., . . .	Allentown,	Lehigh Co.
DALE, RICHARD C., . . .	Philadelphia.	
DANIELS, BENJAMIN, . . .	"	
DAVIS, G. HARRY, . . .	"	
DECHERT, HENRY M., . . .	"	
DECHERT, HENRY T., . . .	"	
DEVELIN, JAS. ALYWARD, . . .	"	
DICKSON, SAMUEL, . . .	"	
DUANE, RUSSELL, . . .	"	
DALE, JOHN M., . . .	Bellefonte,	Centre Co.
DRAKE, FREDERICK S., . . .	Philadelphia.	
ERRETT, W. R., . . .	Pittsburg.	
EVANS, J. A., . . .	"	
EWING, DAVID Q., . . .	"	
ENDSLEY, HARRY S., . . .	Johnstown,	Cambria Co.
EVANS, ALVIN, . . .	Ebensburg,	"
EWING, HON. NATHANIEL, . . .	Uniontown,	Fayette Co.
ELKIN, HON. JOHN P., . . .	Indiana,	Indiana Co.
ESHLEMAN, B. FRANK, . . .	Lancaster,	Lancaster Co.
ESHLEMAN, G. ROSS, . . .	"	"

ELDER, RUFUS C., . . . . .	Lewistown,	Mifflin Co.
ERDMAN, W. A., . . . . .	Stroudsburg,	Monroe Co.
EVANS, MONTGOMERY, . . . . .	Norristown,	Montgomery Co.
ELLIS, WILLIAM S., . . . . .	Philadelphia.	
EMBERY, JOSEPH R., . . . . .	"	
ETTING, THEODORE M., . . . . .	"	
EVANS, ROWLAND, . . . . .	"	
EDWARDS, H. N., . . . . .	Scranton,	Lackawanna Co.
ENDLICH, HON. G. A., . . . . .	Reading,	Berks Co.
FERGUSON, JOHN S., . . . . .	Pittsburg.	
FRAZER, ROBERT S., . . . . .	"	
FLETCHER, FRANK, . . . . .	Bedford,	Bedford Co.
FURST, HON. AUSTIN O., . . . . .	Bellefonte,	Centre Co.
FREEZE, JOHN G., . . . . .	Bloomsburg,	Columbia Co.
FOX, JOHN E., . . . . .	Harrisburg,	Dauphin Co.
FORCE, J. M., . . . . .	Erie,	Erie Co.
FARNHAM, ALEXANDER, . . . . .	Wilkesbarre,	Luzerne Co.
FREDERICKS, J. T., . . . . .	Williamsport,	Lycoming Co.
FOX, EDWARD J., . . . . .	Easton,	Northampton Co.
FENSTERMAKER, THOMAS A., . . . . .	Philadelphia.	
FISHER, SYDNEY G., . . . . .	"	
FLANDERS, HENRY, . . . . .	"	
FOLZ, LEON H., . . . . .	"	
FOW, HON. JOHN H., . . . . .	"	
FREEDLEY, ANGELO T., . . . . .	"	
FREEMAN, JOHN S., . . . . .	"	
FRIES, HARRY K., . . . . .	"	
FURTH, EMANUEL, . . . . .	"	
FUTRELL, WILLIAM H., . . . . .	"	
FRICK, E. H., . . . . .	Altoona,	Blair Co.
FULTON, E. D., . . . . .	Uniontown,	Fayette Co.
GORDON, GEORGE B., . . . . .	Pittsburg.	
GUTHRIE, GEORGE W., . . . . .	"	
GRIER, C. ORR., . . . . .	Kittanning,	Armstrong Co.
GILKESON, A. WEIR, . . . . .	Bristol,	Bucks Co.
GILKESON, HON. B. F., . . . . .	"	"
GREER, HON. J. M., . . . . .	Butler,	Butler Co.
GHEEN, JOHN H., . . . . .	West Chester,	Chester Co.
GILKYSON, H. H., . . . . .	Phoenixville,	"
GORDON, HON. CYRUS, . . . . .	Clearfield,	Clearfield Co.
GEARY, B. F., . . . . .	Lock Haven,	Clinton Co.
GRAHAM, DUNCAN M., . . . . .	Carlisle,	Cumberland Co.
GILBERT, HON. LYMAN D., . . . . .	Harrisburg,	Dauphin Co.
GALBRAITH, W. A., . . . . .	Erie,	Erie Co.

GUILER, W. G., . . . . .	Uniontown,	Fayette Co.
GILLAN, W. RUSH, . . . . .	Chambersburg,	Franklin Co.
GARMAN, JOHN M., . . . . .	Nanticoke,	Luzerne Co.
GORDON, I. A., . . . . .	Mercer,	Mercer Co.
GEARHART, CICERO, . . . . .	Stroudsburg,	Monroe Co.
CALLEN, JOHN C., . . . . .	Philadelphia.	
GEST, JOHN M., . . . . .	"	
GEYELIN, H. LAUSSAT, . . . . .	"	
GILL, HARRY B., . . . . .	"	
GORMAN, WILLIAM, . . . . .	"	
GOWEN, FRANCIS I., . . . . .	"	
GREENE, COL. CHARLES S., . . . . .	"	
GREW, WILLIAM, . . . . .	"	
GUILLOU, VICTOR, . . . . .	"	
GUMMEY, THOMAS A., . . . . .	"	
GLOVER, HORACE PELLMAN, . . . . .	Mifflinburg,	Union Co.
GRAHAM, SAMUEL J., . . . . .	Pittsburg.	
GREEN, B. W., . . . . .	Emporium,	Cameron Co.
GORDON, CADMUS Z., . . . . .	Brookville,	Jefferson Co.
GAITHER, PAUL H., . . . . .	Greensburg,	Westmoreland Co.
GREENE, HOMER, . . . . .	Honesdale,	Wayne Co.
HALL, WM. M., . . . . .	Pittsburg.	
HAMILTON, GEORGE P., . . . . .	"	
HERRIOTT, THOMAS, . . . . .	"	
HALL, WILLIAM M., . . . . .	Bedford,	Bedford Co.
HORN, DANIEL S., . . . . .	"	"
HEISTER, ISAAC, . . . . .	Reading,	Berks Co.
HAMMOND, WM. S., . . . . .	Altoona,	Blair Co.
HARRIS, HENRY O., . . . . .	Doylestown,	Bucks Co.
HUNTLEY, GEORGE W., JR., . . . . .	Emporium,	Cameron Co.
HAUSE, J. FRANK E., . . . . .	West Chester,	Chester Co.
HAYES, WILLIAM M., . . . . .	"	"
HOLDING, A. M., . . . . .	"	"
HAGERTY, M. A., . . . . .	Clearfield,	Clearfield Co.
HARVEY, H. T., . . . . .	Lock Haven,	Clinton Co.
HERRING, GRANT, . . . . .	Bloomsburg,	Columbia Co.
HENDERSON, HON. ROBT. M., . . . . .	Carlisle,	Cumberland Co.
HENDERSON, J. WEBSTER, . . . . .	"	"
HALL, LOUIS W., . . . . .	Harrisburg,	Dauphin Co.
HARGEST, THOMAS S., . . . . .	"	"
HARGEST, WM. M., . . . . .	"	"
HOLDEMAN, D. C., . . . . .	"	"
HERTZOG, D. M., . . . . .	Uniontown,	Fayette Co.
HOGG, WM. A., . . . . .	"	"

HOPWOOD, R. F., . . . . .	Uniontown,	Fayette Co.
HOWELL, G. D., . . . . .	"	"
HOOPES, WM. L., . . . . .	Mifflintown,	Juniata Co.
HENSEL, HON. WM. U., . .	Lancaster,	Lancaster Co.
HOLLAHAN, THOMAS B., . .	"	"
HOSTETTER, ABRAHAM F., .	"	"
HARVEY, EDWARD, . . . . .	Allentown,	Lehigh Co.
HART, WM. W., . . . . .	Williamsport,	Lycoming Co.
HICKS, T. M. B., . . . . .	"	"
HOBSON, F. G., . . . . .	Norristown,	Montgomery Co.
HAIG, ALFRED R., . . . . .	Philadelphia.	
HANCOCK, HENRY J., . . . .	"	
HANNIS, WM. C., . . . . .	"	
HANSEN, E. HUNN, . . . . .	"	
HARRINGTON, DAVID C., . .	"	
HARRITY, HON. WM. F., . .	"	
HART, GAVIN W., . . . . .	"	
HART, THOMAS, JR., . . . .	"	
HARTMAN, J. FREDERICK, . .	"	
HENRY, J. BAYARD, . . . . .	"	
HEPBURN, W. HORACE, . . . .	"	
HINCKLEY, ROBERT H., . . .	"	
HOPKINSON, EDWARD, . . . .	"	
HOPPER, HARRY S., . . . . .	"	
HUEY, SAMUEL B., . . . . .	"	
HYNEMAN, SAMUEL M., . . . .	"	
HAYES, ALFRED, . . . . .	Lewisburg,	Union Co.
HANCOCK, JAMES DENTON, .	Franklin,	Venango Co.
HEYDRICK, HON. CHRISTOPHER,	"	"
HINCKLEY, WATSON D., . . .	Warren,	Warren Co.
HEIGES, GEORGE W., . . . .	York,	York Co.
HAZEN, HON. AARON L., . .	New Castle,	Lawrence Co.
HADERMAN, R. C., . . . . .	Bedford,	Bedford Co.
HEINSLING, H. T., . . . . .	Altoona,	Blair Co.
HEMPHILL, HON. JOSEPH, .	West Chester,	Chester Co.
HIPPLE, T. C., . . . . .	Lock Haven,	Clinton Co.
HALL, E. H., . . . . .	Media,	Delaware Co.
HECK, A. S., . . . . .	Coudersport,	Potter Co.
HAY, A. L. G., . . . . .	Somerset,	Somerset Co.
HAWKINS, CHARLES H., . .	York,	York Co.
HANNA, HON. W. B., . . . .	Philadelphia.	
IMBRIE, A. M., . . . . .	Pittsburg.	
ISRAEL, ABRAHAM, . . . . .	"	
INGHAM, J. C., . . . . .	Towanda,	Bradford Co.



JORDAN, JOHN H., . . . . .	Bedford,	Bedford Co.
JOHNSON, J. C., . . . . .	Emporium,	Cameron Co.
JACOBS, M. W., . . . . .	Harrisburg,	Dauphin Co.
JOHNSON, W. J., . . . . .	Uniontown,	Fayette Co.
JOHNS, A. S., . . . . .	Lancaster,	Lancaster Co.
JOHNSON, JOHN G., . . . . .	Philadelphia.	
JOHNSON, WILLIAM F., . . . .	"	
JONES, JAMES COLLINS, . . . .	"	
JONES, J. LEVERING, . . . . .	"	
JUNKIN, GEORGE, . . . . .	"	
JUNKIN, JOSEPH DEF., . . . .	"	
JEFFRIES, GEORGE B., . . . .	Uniontown,	Fayette Co.
JENKINS, HON. THEO. F., . . .	Philadelphia.	
KENNEDY, HON. JOHN M., . . .	Pittsburg.	
KENNY, CHAS. B., . . . . .	"	
KNOX P. C., . . . . .	"	
KERR, EDWARD F., . . . . .	Bedford,	Bedford Co.
KING, ALEXANDER, . . . . .	"	"
KEELER, E. WESLEY, . . . . .	Doylestown,	Bucks Co.
KUHN, HENRY H., . . . . .	Johnstown,	Cambria Co.
KELLER, HARRY, . . . . .	Bellefonte,	Centre Co.
KREBS, HON. DAVID L., . . . .	Clearfield,	Clearfield Co.
KRESS, WILSON, C., . . . . .	Lock Haven,	Clinton Co.
KOHLER, OTTO, . . . . .	Meadville,	Crawford Co.
KING, EDGAR L., . . . . .	Harrisburg,	Dauphin Co.
KUNKEL, GEORGE, . . . . .	"	"
KENNEDY, R. P., . . . . .	Uniontown,	Fayette Co.
KAUFFMAN, ANDREW J., . . . .	Columbia,	Lancaster Co.
KAUFFMAN, CHRISTIAN C., . . .	"	"
KULP, GEORGE B., . . . . .	Wilkesbarre,	Luzerne Co.
KIRKPATRICK, HON. WM. S.	Easton,	Northampton Co.
KEATOR, JOHN F., . . . . .	Philadelphia.	
KEATING, J. PERCY, . . . . .	"	
KNEASS, HORN R., . . . . .	"	
KIMBLE, FRANK P., . . . . .	Honesdale,	Wayne Co.
KEFOVER, CHAS. F., . . . . .	Uniontown,	Fayette Co.
KNIPE, IRVIN P., . . . . .	Norristown,	Montgomery Co.
KNAPP, HENRY, . . . . .	Scranton,	Lackawanna Co.
KOOSER, F. J., . . . . .	Somerset,	Somerset Co.
LYON, HON. WALTER, . . . . .	Pittsburg.	
LEASON, MIRVEN F., . . . . .	Kittanning,	Armstrong Co.
LAIRD, FRANK H., . . . . .	Beaver,	Beaver Co.

LITTLE, ALVIN L., . . . . .	Bedford,	Bedford Co.
LONGENECKER, J. H., . . . . .	"	"
LONGENECKER, S. R., . . . . .	"	"
LEISENRING, J. L., . . . . .	Altoona,	Blair Co.
LEAR, HENRY, . . . . .	Doylestown,	Bucks Co.
LANDIS, JOHN B., . . . . .	Carlisle,	Cumberland Co.
LLOYD, HON. WM. PENN, . . . . .	Mechanicsburg,	"
LAMBERTON, WM. B, . . . . .	Harrisburg,	Dauphin Co.
LAMBERTON, JAMES M., . . . . .	"	"
LAMB, T. A., . . . . .	Erie	Erie Co.
LINDSEY, R. H. . . . .	Uniontown,	Fayette Co.
LOVELL, K. A., . . . . .	Huntingdon,	Huntingdon Co.
LYONS, HON. JEREMIAH . . . . .	Mifflintown,	Juniata Co.
LANDIS, CHAS. I, . . . . .	Lancaster,	Lancaster Co.
LIGHT, S. P., . . . . .	Lebanon,	Lebanon Co.
LENAHAN, JOHN T., . . . . .	Wilkesbarre,	Luzerne Co.
LOOS, WILLIAM C., . . . . .	Bethlehem,	Northampton Co.
LANDRETH, LUCIUS S., . . . . .	Philadelphia.	
LEAMING, THOMAS, . . . . .	"	
LEACH, FRANK WILLING, . . . . .	"	
LEACH, J. GRANVILLE, . . . . .	"	
LEONARD, FREDERICK M., . . . . .	"	
LEVI, JULIUS C., . . . . .	"	
LEWIS, FRANCIS D., . . . . .	"	
LEWIS, WM. DRAPER, . . . . .	"	
LOWRY, BENJ. H., . . . . .	"	
LOWREY, DWIGHT M., . . . . .	"	
LUKENS, WILLIAM H. R., . . . . .	"	
LEONARD, FRED. C., . . . . .	Coudersport,	Potter Co.
LEUSCHNER, E. P., . . . . .	Pottsville,	Schuylkill Co.
LOWRY, J. C., . . . . .	Somerset,	Somerset Co.
LEISER, ANDREW ALBRIGHT, . . . . .	Lewisburg,	Union Co.
LINDSEY, W. M., . . . . .	Warren,	Warren Co.
LITTLE, W. E., . . . . .	Tunkhannock,	Wyoming Co.
LANDIS, HON. AUG. S., . . . . .	Hollidaysburg,	Blair Co.
LITTLE, P. J., . . . . .	Ebensburg,	Cambria Co.
LUCORE, RUFUS, . . . . .	Ridgway,	Elk Co.
MACFARLANE, JAMES R., . . . . .	Pittsburg.	
MCCANN, S. DAVID, . . . . .	"	
MCCLAY, SAMUEL, . . . . .	"	
MCCLUNG, HON. S. A., . . . . .	"	
MCCLUNG, W. H., . . . . .	"	
MCCOOK, WILLIS F., . . . . .	"	
MCGIRR, FRANK C., . . . . .	"	
MCKENNA, CHARLES F., . . . . .	"	

McKENNAN, JOHN D., . . .	Pittsburg.	
MEYER, HENRY, . . . . .	"	
MILLER, JACOB H., . . . . .	"	
MINOR, WILLIAM E., . . . . .	"	
MOORE, W. S., . . . . .	Beaver,	Beaver Co.
McNAMARA, ROBT, C., . . .	Bedford,	Bedford Co.
MERVINE, NICHOLAS P., . . .	Altoona,	Blair Co.
MAXWELL, WILLIAM, . . . .	Towanda,	Bradford Co.
MERCUR, RODNEY A., . . . .	"	"
McQUISTION, LEV., . . . . .	Butler,	Butler Co.
MARTIN, FRANK P., . . . . .	Johnstown,	Cambria Co.
MURPHY, ROBERT S., . . . .	"	"
MYERS, H. H., . . . . .	Ebensburg,	"
McNEELIS, ED. L., . . . . .	Johnstown,	"
McNARNEY, JAMES P., . . . .	Emporium,	Cameron Co.
MULHEARN, EDW. M., . . . .	Mauch Chunk,	Carbon Co.
MONAGHAN, JAMES, . . . . .	West Chester,	Chester Co.
MONAGHAN, R. JONES, . . . .	"	"
MITCHELL, OSCAR, . . . . .	Clearfield,	Clearfield Co.
MERRILL, JESSE, . . . . .	Lock Haven,	Clinton Co.
McCORMICK, S. M., . . . . .	"	"
MAYER, HON. C. A., . . . . .	"	"
McKILLIP, H. A., . . . . .	Bloomsburg,	Columbia Co.
McCARRELL, S. J. M., . . . .	Harrisburg,	Dauphin Co.
McCORMICK, HENRY B., . . . .	"	"
McPHERSON, HON. JOHN B., . .	"	"
MEYERS, WILLIAM K., . . . . .	"	"
MITCHELL, E. B., . . . . .	"	"
McCAULEY, C. H., . . . . .	Ridgway,	Elk Co.
MARSHALL, F. F., . . . . .	Erie,	Erie Co.
MCDOWELL, JOHN M., . . . . .	Chambersburg,	Franklin Co.
MEANS, GEORGE W., . . . . .	Brookville,	Jefferson Co.
McMEEN, ROBERT, . . . . .	Mifflintown,	Juniata Co.
McCONALEY, JOHN G., . . . .	New Castle,	Lawrence Co.
MARTIN, HON. J. NORMAN, . .	"	"
MINER, SYDNEY R., . . . . .	Wilkesbarre,	Luzerne Co.
MOORE, JOSEPH, . . . . .	"	"
METZGER, HON. JOHN J., . . .	Williamsport,	Lycoming Co.
McCORMICK, HON. HENRY C., . .	"	"
McCORMICK, SETH T., . . . . .	"	"
MUNSON, C. LA RUE, . . . . .	"	"
MULLIN, EUGENE, . . . . .	Bradford City,	McKean Co.
McKEE, JOHN ANDREW, . . . .	Lewistown,	Mifflin Co.
McCOUCH, H. GORDON, . . . .	Philadelphia.	
McCULLEN, JOSEPH P., . . . .	"	

McLOUGHLIN, EDWARD D., . Philadelphia.	
MAGILL, EDWARD W., . . . . .	"
MARTIN, J. WILLIS, . . . . .	"
MAXWELL, ROBERT D., . . . . .	"
MEIGS, WILLIAM M., . . . . .	"
MELLORS, JOSEPH, . . . . .	"
MERCER, GEORGE G., . . . . .	"
MEREDITH, WILLIAM M., . . . . .	"
MERRILL, JOHN HOUSTON, . . . . .	"
MESSEMER, WILLIAM S., . . . . .	"
MILLER, E. SPENCER, . . . . .	"
MILLER, N. DUBOIS, . . . . .	"
MONTGOMERY, W. W., . . . . .	"
MOORE, ALFRED, . . . . .	"
MORRIS, WILLIAM, . . . . .	"
MOYER, JOSEPH W., . . . . . Pottsville,	Schuylkill Co.
McCLURE, HON. HAROLD M., Lewisburg,	Union Co.
MUMFORD, E. C., . . . . . Honesdale,	Wayne Co.
MCCARRELL, L., . . . . . Washington,	Washington Co.
McILVAINE, HON. J. A., . . . . .	"
MILLER, W. A., . . . . . York,	York Co.
MACRUM, W., . . . . . Pittsburg.	
MILLER, J. J., . . . . .	"
MCCLEAVE, JOHNS, . . . . .	"
McLAIN, JAMES H., . . . . . Kittanning,	Armstrong Co.
MARTIN, J. RANKIN, . . . . . Beaver,	Beaver Co.
MAUGER, DAVID F., . . . . . Reading,	Berks Co.
MAFFETT, JAMES T., . . . . . Clarion,	Clarion Co.
MILLER, ALBERT, . . . . . Harrisburg,	Dauphin Co.
MESTREZAT, HON. S. L., . . . . . Uniontown,	Fayette Co.
McCLINTOCK, ANDREW H., . . . . . Wilkesbarre,	Luzerne Co.
MOON, R. O., . . . . . Philadelphia.	
McCOLLIN, EDWARD G., . . . . .	"
MARR, WILLIAM A., . . . . . Pottsville,	Schuylkill Co.
McILVAINE, WINFIELD N., . . . . . Washington,	Washington Co.
MOREHEAD, JAMES S., . . . . . Greensburg.	Westmoreland Co.
NILES, ALFRED J., . . . . . Pittsburg.	
NEALE, HON. JAMES B., . . . . . Kittanning,	Armstrong Co.
NEAD, BENJ. M., . . . . . Harrisburg,	Dauphin Co.
NISSLEY, H. L., . . . . .	"
NISSLEY, JOHN C., . . . . .	"
NORRIS, A. WILSON, . . . . .	"
NORTH, HUGH M., . . . . . Lancaster,	Lancaster Co.
NICHOLAS, H. S. P., . . . . . Philadelphia.	

NEILL, SAMUEL T., . . . . .	Warren,	Warren Co.
NOYES, HON. CHARLES H., . . . . .	"	"
NILES, H. C., . . . . .	York,	York Co.
NEILSON, WILLIAM D., . . . . .	Philadelphia.	
NEEPER, A. N., . . . . .	Pittsburg.	
ORR, CHARLES P., . . . . .	Pittsburg.	
OSBURN, FRANK C., . . . . .	"	
OWENS, G. LLOYD, . . . . .	Tyrone,	Blair Co.
O'CONNOR, FRANCIS J., . . . . .	Johnstown,	Cambria Co.
ORRIS, ELLIS L., . . . . .	Bellefonte,	Centre Co.
OLMSTED, M. E., . . . . .	Harrisburg,	Dauphin Co.
OTT, FREDERICK, M., . . . . .	"	"
OLMSTEAD, C. GEORGE, . . . . .	Corry,	Erie Co.
OMWAKE, W. J., . . . . .	Waynesboro,	Franklin Co.
ORLADY, HON. GEORGE B., . . . . .	Huntingdon,	Huntingdon Co.
ORAM, W. H. M., . . . . .	Shamokin,	Northumberland Co.
O'CALLAGHAN, M. J., . . . . .	Philadelphia.	
OUTERBRIDGE, ALBERT A., . . . . .	"	
OLMSTED, HON. A. G., . . . . .	Coudersport,	Potter Co.
OSMER, J. H., . . . . .	Franklin,	Venango Co.
OVER, HON. JAMES W., . . . . .	Pittsburg.	
OAKFORD, J. W., . . . . .	Scranton,	Lackawanna Co.
PATTERSON, THOMAS, . . . . .	Pittsburg.	
PLUMER, L. M., . . . . .	"	
PORTER, EDWIN L., . . . . .	"	
PORTER, HON. WILLIAM D., . . . . .	"	
PENNELL, E. M., . . . . .	Bedford,	Bedford Co.
PATTERSON, JOHN K., . . . . .	Altoona,	Blair Co.
PATTERSON, W. H., . . . . .	Houtzdale,	Clearfield Co.
PATTERSON, JOHN E., . . . . .	Harrisburg,	Dauphin Co.
PLAYFORD, W. H., . . . . .	Uniontown,	Fayette Co.
PENNELL, F. M. M., . . . . .	Mifflintown,	Juniata Co.
PATTERSON, ROSWELL H., . . . . .	Scranton,	Lackawanna Co.
PRICE, SAMUEL B., . . . . .	"	"
PALMER, HON. H. W., . . . . .	Wilkesbarre,	Luzerne Co.
PARSONS, HENRY C., . . . . .	Williamsport,	Lycoming Co.
PAGE, HOWARD W., . . . . .	Philadelphia.	
PAGE, S. DAVIS, . . . . .	"	
PATTERSON, T. ELLIOTT, . . . . .	"	
PERKINS, EDWARD J., . . . . .	"	
PENROSE, HON. BOIES, . . . . .	"	
PEPPER, GEORGE WHARTON, . . . . .	"	
PHILLIPS, ALFRED J., . . . . .	"	

POTTER, SHELDON, . . . . .	Philadelphia.	
PRICHARD, F. P., . . . . .	"	
PECK, J. NEWTON, . . . . .	Coudersport,	Potter Co.
PUGH, JAMES L., . . . . .	Somerset,	Somerset Co.
PYATT, JAMES W., . . . . .	Tunkhannock,	Wyoming Co.
POINTS, MOSES A., . . . . .	Bedford,	Bedford Co.
PEALE, HON. S. R., . . . . .	Lock Haven,	Clinton Co.
PATTERSON, C. STUART, . . . .	Philadelphia.	
PATTERSON, G. STUART, . . . .	"	
PAUL, J. RODMAN, . . . . .	"	
PENNYPACKER, HON. SAMUEL W., . . . . .	"	
REED, JAMES H., . . . . .	Pittsburg.	
REYNOLDS, HON. JOHN M., . . .	Bedford,	Bedford Co.
RICHARDS, LOUIS, . . . . .	Reading,	Berks Co.
ROCKWELL, DELOS, . . . . .	Troy,	Bradford Co.
ROSE, HORACE RAMSEY, . . . .	Johnstown,	Cambria Co.
ROSE, WILLIAM HORACE, . . . .	"	"
RAMSEY, SAMUEL D., . . . . .	West Chester,	Chester Co.
RHAWN, W. H., . . . . .	Catawissa,	Columbia Co.
ROBINSON, HON. J. B., . . . .	Media,	Delaware Co.
ROBINSON, V. GILPIN, . . . . .	"	"
RATHBUN, GEORGE A., . . . . .	Ridgway,	Elk Co.
RILLING, JOHN S., . . . . .	Erie,	Erie Co.
ROSENWEIG, L., . . . . .	"	"
REPPERT, E. A., . . . . .	Uniontown,	Fayette Co.
ROWE, HON. D. WATSON, . . . .	Chambersburg,	Franklin Co.
READING, JOHN G., JR., . . . .	Williamsport,	Lycoming Co.
REARDON, JOHN J., . . . . .	"	"
RAWLE, FRANCIS, . . . . .	Philadelphia.	
READ, JOHN R., . . . . .	"	
REED, JOSEPH A., . . . . .	"	
REX, WALTER E., . . . . .	"	
RHOADS, J. HOWARD, . . . . .	"	
RHOADS, JOSEPH R., . . . . .	"	
RITER, HON. FRANK M., . . . .	"	
ROBERTS, JOHN, . . . . .	"	
RODMAN, WALTER C., . . . . .	"	
ROGERS, JOHN I., . . . . .	"	
ROTHERMEL, P. F., JR., . . . .	"	
RUMSEY, HORACE M., . . . . .	"	
RUPPEL, W. H., . . . . .	Somerset,	Somerset Co.
ROBBINS, EDWIN E., . . . . .	Greensburg,	Westmoreland Co.
ROBERTS, GEORGE L., . . . . .	Pittsburg.	

RODGERS, W. B., . . . . .	Pittsburg.	
REED, ALFRED P., . . . . .	West Chester,	Chester Co.
REED, HON. JOHN W., . . . . .	Brookville,	Jefferson Co.
RICE, HON. CHAS. E., . . . . .	Wilkesbarre,	Luzerne Co.
ROSE, N. SARGENT, . . . . .	York,	York Co.
RIDDLE, GEORGE D., . . . . .	Pittsburg.	
SCANDRETT, R. B., . . . . .	Pittsburg.	
SCHOYER, SOL., JR., . . . . .	"	
SCOTT, WILLIAM, . . . . .	"	
SCHAFER, JOHN D., . . . . .	"	
SHIELDS, JAMES M., . . . . .	"	
SHIRAS, GEORGE, 3d, . . . . .	"	
SLAGLE, HON. JACOB F., . . . . .	"	
SMITH, EDWIN W., . . . . .	"	
SMITH, EDWIN Z., . . . . .	"	
STADTFELD, JOSEPH, . . . . .	"	
STERRETT, JAMES R., . . . . .	"	
STONER, E. R., . . . . .	"	
SHELL, WILLIAM P., . . . . .	Bedford,	Bedford Co.
SCHEAFFER, D. NICHOLAS, . . . . .	Reading,	Berks Co.
STEPHENS, MARTIN B., . . . . .	Johnstown,	Cambria Co.
STORY, HENRY WILSON, . . . . .	"	"
SHOEMAKER, F. A., . . . . .	Ebensburg,	Cambria Co.
SMITH, ALLISON U., . . . . .	Clearfield, .	Clearfield Co.
SWOPE, W. I., . . . . .	"	"
SWOOPE, ROWLAND D., . . . . .	"	"
SMALL, C. A., . . . . .	Catawissa,	Columbia Co.
SMEAD, A. D. BACHE, . . . . .	Carlisle,	Cumberland Co.
STUART, HUGH F., . . . . .	"	"
SADLER, W. F., . . . . .	"	"
SHELLEY, JOHN L., . . . . .	Mechanicsburg,	"
SHOEMAKER, HOMER, . . . . .	Harrisburg,	Dauphin Co.
SHOOP, JOHN H., . . . . .	"	"
SIMONTON, HON. J. W., . . . . .	"	"
SNODGRASS, ROBERT, . . . . .	"	"
SNYDER, EUGENE, . . . . .	"	"
STAMM, A. C., . . . . .	"	"
STRANAHAN, HON. JAMES A., . . . . .	"	"
SAWDEY, G. A., . . . . .	Erie,	Erie Co.
SHARPE, WALTER K., . . . . .	Chambersburg,	Franklin Co.
SAYERS, JAMES E., . . . . .	Waynesburg,	Greene Co.
SMITH, HON. PETER P., . . . . .	Scranton,	Lackawanna Co.
SCHOCK, GEORGE B., . . . . .	Lebanon,	Lebanon Co.
SHIRK, HOWARD C., . . . . .	"	"

SCHAADT, JAMES L., . . . .	Allentown,	Lehigh Co.
SHOEMAKER, R. C., . . . .	Wilkesbarre,	Luzerne Co.
SPROUT, CLARENCE E., . . .	Williamsport,	Lycoming Co.
STAPLES, CHARLES B., . . .	Stroudsburg,	Monroe Co.
STORM, JOHN B., . . . .	"	"
SCARLET, JAMES, . . . .	Danville,	Montour Co.
STEELE, H. J., . . . .	Easton, ,	Northampton Co.
STEWART, RUSSELL C., . . .	"	"
SAVIDGE, C. R., . . . .	Shamokin,	Northumberland Co.
SEIBERT, WM. N., . . . .	New Bloomfield,	Perry Co.
SMILEY, CHARLES H., . . .	"	"
SAMUEL, JOHN, . . . .	Philadelphia.	
SAVIDGE, JOSEPH, . . . .	"	
SCHUCK, LOUIS F., . . . .	"	
SCOTT, HENRY J., . . . .	"	
SCOTT, JOHN, JR., . . . .	"	
SCOTT, JOHN M., . . . .	"	
SCOTT, HON. JOHN, . . . .	"	
SELLERS, JAMES C., . . . .	"	
SHAPLEY, RUFUS E., . . . .	"	
SHARP, ISAAC S., . . . .	"	
SHEARER, ALBERT B., . . .	"	
SHERMAN, CHARLES P., . . .	"	
SHIELDS, A. S. L., . . . .	"	
SHOEMAKER, JOSEPH H., . .	"	
SHOYER, FREDERICK J., . . .	"	
SIMPERS, ROBERT N., . . . .	"	
SIMPSON, ALEX , JR., . . . .	"	
SMITH, ALFRED P., . . . .	"	
SMITH, WALTER GEORGE, . .	"	
SMITH, WILLIAM RUDOLPH, .	"	
SMITH, LEWIS LAWRENCE, . .	"	
SPARHAWK, JOHN, JR., . . .	"	
STAAKE, WILLIAM H., . . . .	"	
STENGER, WILLIAM S., . . .	"	
STILLWELL, JAMES C., . . . .	"	
STITZELL, HENRY FRANCIS, .	"	
STOEVER, WILLIAM C., . . .	"	
SCOTT, JOHN L., . . . .	Somerset,	Somerset Co.
SCULL, GEORGE R., . . . .	"	"
STRAWBRIDGE, RALPH M., .	Lewisburg,	Union Co.
SEARLE, ALONZO T., . . . .	Honesdale,	Wayne Co.
STOCKER, R. M., . . . .	"	"
SCHMIDT, GEORGE S., . . .	York,	York Co.
STEWART, W. F. BAY, . . .	"	"



STRAWBRIDGE, JOSEPH R., . . . York,	York Co.
SHIRAS, W. K., . . . . . Pittsburgh.	
SWEARINGEN, J. M., . . . . . "	
SCULL, EDWARD B., . . . . . "	
SANDERSON, JOHN F., . . . . . "	
SHARKEY, FRANK P., . . . . . Mauch Chunk,	Carbon Co.
STEWART, HON. JOHN, . . . Chambersburg,	Franklin Co.
SEIBERT, WM. S., . . . . . New Bloomfield,	Perry Co.
STUTZBACK, MARTIN H., . . Philadelphia.	
SUTTON, W. HENRY, . . . . . "	
TRENT, S. U., . . . . . Pittsburgh.	
TATE, H. D., . . . . . Bedford,	Bedford Co.
TRICKETT, WM., . . . . . Carlisle,	Cumberland Co.
THOMPSON, A. F., . . . . . Harrisburg,	Dauphin Co.
TAYLOR, CARTER BERKLEY, . Philadelphia.	
TERRY, HENRY C., . . . . . "	
THOMPSON, SAMUEL G., . . . . . "	
TODD, M. HAMPTON, . . . . . "	
TULL, JOSPH L., . . . . . "	
TERRY, CHARLES E., . . . . . Tunkhannock,	Wyoming Co.
TRIMMER, DANIEL K., . . . York,	York Co.
TAYLOR, J. F., . . . . . Washington,	Washington Co.
THORP, C. M., . . . . . Pittsburgh.	
THOMPSON, JOHN M., . . . . . Butler,	Butler Co.
THOMAS, SAMUEL HINDS, . . Philadelphia.	
TODD, HENRY C., . . . . . "	
UMBEL, R. E., . . . . . Uniontown,	Fayette Co.
UTTLEY, T. M., . . . . . Lewistown,	Mifflin Co.
UHL, JOHN H., . . . . . Somerset,	Somerset Co.
ULRICH, J. O., . . . . . Tamaqua,	Schuylkill Co.
VANDERLIN, J. C., . . . . . Butler,	Butler Co.
VAN DYKE, J. KITTEA, . . . Harrisburg,	Dauphin Co.
VAIL, LEWIS D., . . . . . Philadelphia.	
VALENTINE, JOHN K., . . . . . "	
VAN DUSEN, GEORGE R., . . . . . "	
VAN ETEN, J. H., . . . . . Milford,	Pike Co.
VAN HORN, CHARLES F., . . Philadelphia.	
WATSON, D. T., . . . . . Pittsburgh.	
WEIL, A. LEO, . . . . . "	
WISE, J.H., . . . . . "	
WHITE, JOHN NEWTON, . . . . . "	
WOODWARD, MARCUS A., . . . . . "	

WELLER, JOHN S., . . . . .	Bedford,	Bedford Co.
WALKER, J. M., . . . . .	Emporium,	Cambria Co.
WILSON, S. V., . . . . .	Clearfield,	Clearfield Co.
WEAKLEY, J. M., . . . . .	Carlisle,	Cumberland Co.
WETZEL, JOHN W., . . . . .	"	"
WOODS, RICHARD W., . . . . .	"	"
WEISS, JOHN H., . . . . .	Harrisburg,	Dauphin Co.
WOLFE, LEROY J., . . . . .	"	"
WICKERSHAM, FRANK B., . . . .	Steelton,	"
WHITTLESEY, E. L., . . . . .	Erie,	Erie Co.
WORK, J. C., . . . . .	Uniontown,	Fayette Co.
WALTER, CHARLES, . . . . .	Chambersburg,	Franklin Co.
WALTON, DANIEL S., . . . . .	Waynesburg,	Greene Co.
WAITE, HAYES H., . . . . .	Huntingdon,	Huntingdon Co.
WILLIAMSON, W. MCK., . . . .	"	"
WHITE, HARRY, . . . . .	Indiana,	Indiana Co.
WARREN, EVERETT, . . . . .	Scranton,	Lackawanna Co.
WATRES, HON. LOUIS ARTHUR, .	"	"
WELLES, CHARLES H., . . . . .	"	"
WILCOX, WILLIAM A., . . . . .	"	"
WILLARD, E. N., . . . . .	"	"
WINTERNITZ, B. A., . . . . .	New Castle,	Lawrence Co.
WEIDMAN, GRANT, JR., . . . .	Lebanon,	Lebanon Co.
WRIGHT, HON. R. E., . . . . .	Allentown,	Lehigh Co.
WILLIAMS, ALFRED W., . . . . .	Sharon,	Mercer Co.
WOODS, HON. JOSEPH M., . . . .	Lewistown,	Mifflin Co.
WEST, WILLIAM KASE, . . . . .	Danville,	Montour Co.
WOLVERTON, S. P., . . . . .	Sunbury,	Northumberland Co.
WALTON, HENRY F., . . . . .	Philadelphia.	
WAXLER, WILLIAM HALL, . . . .	"	
WAYLAND, FRANCIS L., . . . .	"	
WEIMER, ALBERT B., . . . . .	"	
WETHERILL, CHARLES, . . . . .	"	
WHITE, ELIAS H., . . . . .	"	
WHITE, RICHARD P., . . . . .	"	
WHITE, WILLIAM. JR., . . . . .	"	
WILLIAMS, CARROLL R., . . . . .	"	
WILLIAMS, J. HENRY, . . . . .	"	
WINTERSTEEN, A. H., . . . . .	"	
WILLIAMS, JAMES S., . . . . .	"	
WILTBANK, WILLIAM W., . . . .	"	
WISTER, WILLIAM ROTCH, . . . .	"	
WOOD, R. FRANCIS, . . . . .	"	
WOODRUFF, CLINTON ROGERS, . .	"	
WILSON, HENRY, . . . . .	Honesdale,	Wayne Co.

WAY, WILLIAM A., . . . . .	Pittsburg.	
WHITE, HON J. W., . . . . .	"	
WILSON, J. SHARP, . . . . .	Beaver,	Beaver Co.
WEAVER, JOHN, . . . . .	Philadelphia.	
WALKER, C. W., . . . . .	Somerset,	Somerset Co.
WILLIAMS, VIN E., . . . . .	Greensburg,	Westmoreland Co.
WILLIAMS, SMYER, . . . . .	York,	York Co.
WOODCOCK, W. T., . . . . .	Hollidaysburg,	Blair Co.
WAITNEIGHT, HARRY P., . . .	Phoenixville,	Chester Co.
WINDLE, WILLIAM S., . . . .	West Chester,	"
WILER, ALFRED DAY, . . . .	Philadelphia.	
YOUNG, JAMES S., . . . . .	Pittsburg.	
YARDLEY, ROBERT M., . . . .	Doylestown,	Bucks Co.
YERKES, HON. HARMAN, . . .	"	"

# LIST OF BAR ASSOCIATIONS IN PENNSYLVANIA

NOTE —This list has been compiled by the Secretary of the Pennsylvania Bar Association from replies to circulars sent to the Secretary of each local Association as late as September 9, 1896. All Associations which are purely Library Associations are intended to be omitted. In one instance, Berks, the officers for former years are given, as no reply was obtained from the officers of that Association. The Secretary will be indebted for information as to any omissions and for corrections and changes of the names of officers.

NAME	PRESIDENT	SECRETARY
PENNSYLVANIA BAR ASSOCIATION.	P. C. Knox, Pittsburg.	Edward P. Allinson, Philadelphia.
ADAMS COUNTY BAR ASSOCIATION.	David McConaughy, Gettysburg.	W. Clarence Sheely, Gettysburg.
ALLEGHENY COUNTY BAR ASSOCIATION.	Wm. Scott, Pittsburg.	Chas. W. Scovell, Pittsburg.
BEAVER COUNTY LAW ASSOCIATION.	G. L. Eberhart, Beaver.	W. S. Morrison, Beaver.
BERKS COUNTY BAR ASSOCIATION.	Jacob S. Livingood, Reading.	Dan'l H. Wingerd, Reading.
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